

EXHIBIT 12

Arbitration Transcript

Case Number: 1208

Date: January 23, 2025

In the matter of:

UNION PACIFIC v SMART-TD

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 23rd day of
10 January, 2025, commencing at the hour of 9:00 a.m.
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ARBITRATION - JANUARY 23, 2025
UNION PACIFIC v SMART-TD

JOB NO. 1400040

1 A P P E A R A N C E S

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1 ARBITRATOR: Good morning, everyone.

2 Are you all set?

3 THE COURT REPORTER: I'm ready.

4 ARBITRATOR: Okay, good.

5 We're going to begin today with the
6 carrier's rebuttal.

7 MR. MUNRO: Morning, members of the
8 board. As the Chair just indicated, we are here today
9 to present the carrier's rebuttal. I think that the
10 one thing that we agree on is that there's not much we
11 agree on. There are disagreements on a huge range of
12 issues. And it's not just the big issues. Lots of
13 the details too. Who gets forced when a position is
14 vacant? The use of qualified employees as a fallback
15 when there's no other person available. How to
16 calculate fringe benefits. How we think about the
17 rest day factor. On and on and on.

18 And it's not just disagreements on the
19 terms of the proposals but on some of the fundamental
20 goals and purposes of this exercise. The union wants
21 to maintain employee earnings while working less. We
22 do not see that as vital, nor do we see it as the
23 purpose of Articles 5, 6 and 7. In other words, it is
24 not the purpose of those provisions to maintain
25 earnings while implementing new schedules. It's also

1 inherently inconsistent.

2 It's fine to say that you want to work
3 less. That's completely understandable, but what is
4 not is to say, I want to work less and, yet, still
5 keep making the same amount of money. That's not the
6 purpose of the scheduling provision. They also say
7 they want improved quality of life. We say that means
8 increased certainty over when you will be able to take
9 rest, when they know they will have time off, so that
10 you can plan for the rest of your life. The union's
11 concept of quality of life is that employees should
12 have discretion over whether they come to work or not.

13 They want to control when they work,
14 including provisions for earned days off, voluntary
15 rest, the increase of pre-approved layoffs to 25% and
16 so on and so on. The upshot is that they can decide
17 whether to come to work or not. That's not how
18 employment works. It's certainly not how the railroad
19 works. These are not standard jobs. It's not like
20 shift work. The inherent nature of the work involves
21 some degree of unpredictability.

22 And prospective hires are told this.
23 When they sign on with the railroad, they are told,
24 you're not going to be working the standard 40-hour
25 week; there are irregularly scheduled days off; you're

1 going to be on call, nights, weekends, holidays; and
2 you're required to report with 90 minutes of
3 notification. And employees are well paid to work
4 these jobs. We understand that this is hard work, and
5 employees are well compensated. By their own
6 calculation -- by the evidence the union has
7 presented, in their Exhibit 43, total compensation for
8 pool freight employees is \$201,000 and for extra board
9 employees it's \$212,000. So they're being compensated
10 for the burdens of these jobs.

11 Beyond the substantive disagreements,
12 there are also what we believe to be some systemic
13 flaws in the way the union has approached this case.
14 For example, they've set up a bunch of straw men.
15 They've pointed to items that we're not seeking or
16 arguments that we're not making. I'll give you some
17 examples of those later in our presentation. They're
18 using examples of carrier language in their
19 presentation that do not reflect our proposals. For
20 example, many of the pool regulation calendars that
21 they presented, the long series of calendars that
22 Mr. Edington referred to yesterday, refer to carrier
23 proposed rules that we are not proposing.

24 Third, there is an enormous amount of
25 reasoning by anecdote in their presentation with

1 respect to how work rest operates, with respect to
2 pool regulation. And essentially what they're
3 suggesting is that, because certain outcomes could
4 happen, even if they're highly unlikely, the carrier's
5 proposed rules are unfair. We don't think that that's
6 a reasonable way to approach the analysis.

7 Now, I find that in even a very
8 complicated case like this one, there's often one key
9 issue, one point on which the case pivots. And I
10 would suggest that in this case, it's this question
11 about quid pro quo. The union's entire case turns on
12 this assumption that there is a \$333 million savings
13 per year and a cut of more than 1500 employees from
14 abolishing the extra boards. All of their demands
15 flow from that. Their entire case rests on this
16 premise.

17 Now, maybe it's just unfortunate that
18 there was a miscommunication in the collective
19 bargaining, but they should understand by now that we
20 are not proposing that. If our written materials are
21 not sufficiently clear, let me try to be more direct.
22 I am stipulating for Union Pacific on the record that
23 implementation of our proposal will not result in a
24 reduction of the SMART TD workforce.

25 In fact, we think it will go up. As

1 our analysis shows, we show a head count impact for
2 work rest where we're going to need to add 400 -- more
3 than 470 people. Now, I want to clarify. I'm saying
4 that the number of employees is not going to go down
5 as a result of this process. I'm not making any
6 promises about reductions for the state of the economy
7 or other reasons. What I'm saying is these rules will
8 not cause the reduction that they are pointing to or
9 anything close. That should take care of their quid
10 pro quo theory. Their ask for \$309 million a year in
11 benefits depends entirely on that theory, and it is
12 just wrong, period.

13 Let me just briefly explain the process
14 that we'd like to use this morning. I have our same
15 three witnesses from Tuesday here with us again. And
16 we're going to tradeoff responding to some of the
17 points that the union has made. What we've done is
18 we've taken the union's presentation from yesterday
19 and we're going to use it as a frame to do a sort of a
20 point-by-point response to the arguments that they've
21 made.

22 We're not going to cover every one of
23 their slides because many of them address the same
24 subjects or just aren't necessary to the argument. So
25 we've skipped some where we can save some time, and

1 we've interlaced their presentation with rebuttal
2 material that's responsive to each slide. The
3 witnesses will take turns addressing the various
4 subjects. I'm going to handle a couple of the
5 subjects that are in the nature of argument, not
6 evidence.

7 But if the board would like to re-swear
8 the witnesses, we can do that, or we could just remind
9 them they're still under oath, as you prefer.

10 ARBITRATOR: Thank you.

11 I would just remind you that you
12 continue to be under oath.

13 MR. MUNRO: Thank you, Madam Chair.
14 Then with the board's permission, we'll proceed with
15 the rebuttal.

16 The first issue that the union
17 presented yesterday, a presentation by their council
18 that I'd like to respond to briefly. And it concerns
19 this issue of PEB250 and what the quid pro quo is here
20 because they said both in their written materials and
21 yesterday that we're arguing that it was the wage
22 increases that were the quid pro quo for the benefits
23 of Articles 6 and 7.

24 This is just -- this is a red herring.
25 We can quibble back and forth about what the PEB

1 meant, but we all agree that the quid pro quo is, as
2 the union says, within it exists in Articles 5
3 through 7. They get scheduled rest days under
4 Article 5; we get the benefits of Articles 6 and 7.
5 And with respect to that trade, keep in mind that
6 Articles 6 and 7 were the carrier's proposals.

7 So it should be obvious that those are
8 not then vehicles to assign huge additional costs. We
9 were not proposing to spend enormous amounts of
10 additional money beyond the wage increases and other
11 benefits that the union's achieved before PEB250. So
12 the cost to the railroad -- the quid pro quo that
13 we're paying is in Article 5. It's the voluntary
14 assigned rest days. And what the PEB called the
15 operational benefits and cost savings come from
16 Article 6 and 7. What we want out of this is
17 Article 6 and 7.

18 And why does that matter? What's the
19 relevance of this debate? Because it supports the
20 point that both sides have made. The scope of what's
21 available here -- the scope of what this board is
22 doing is limited to those issues contained in those
23 three subjects. Let me make one side point here about
24 PEB250. President Ferguson testified yesterday that
25 the PEB did not say that it intended a win-win and it

1 was just quoting the carriers. Well, that's not true.
2 This is a direct quote from the board's report. I
3 believe it's on page 34. It's not a quote from the
4 parties. The board is using the term of art, win-win,
5 and describing what it intends. So it's very clear
6 that the board did say this is supposed to be a
7 win-win for both sides. With that, let me turn the
8 analysis over to Jennifer Powell.

9 WITNESS POWELL: Thank you.

10 Can you hear me? I just want to make
11 sure this is on. Can you hear me okay?

12 I will be going through a few of these
13 slides that SMART has presented yesterday. I'll try
14 to be as brief as possible, just making points and
15 continuing, you know, through each slide. And then
16 there'll be points where I'll direct it to Doug or
17 Grant here to at any rate.

18 So first on their Slide 6, which is
19 the -- their slide on the carrier's proposed work-rest
20 pool freight. So SMART TD says that its pool
21 work-rest model would provide for increased
22 availability, but that simply is false. SMART TD's
23 work-rest proposal allows the union to choose from a
24 variety of work-rest options that results in employees
25 being off anywhere from one to three days on a

1 reoccurring basis. That is a substantial level of new
2 unavailability for our system to absorb. So it's
3 unclear why SMART seems to think that its work-rest
4 proposal would include a increased availability
5 because that simply is not the case.

6 Excuse me. I'm sorry. Give me one
7 second. I'm sorry about that.

8 MR. CHIAVETTA: So just to be clear, I
9 think Ms. Powell was referring to Slide 5 in SMART
10 TD's presentation referring to increased availability.

11 WITNESS POWELL: I apologize. Okay.
12 So back to Slide 6, which is the carrier's proposal.
13 SMART says that the carrier's proposed work schedule
14 for freight creates an unpredictable work-rest
15 schedule. But this is simply wrong. The carrier has
16 proposed a 5:1 work-rest schedule for the pool. The
17 employees would get at least one day off for every six
18 days. And there's nothing uncertain about that for
19 the same reason the carrier's work-rest schedule
20 improves the quality of life for its employees.

21 SMART's comment about unpredictability,
22 about shifting the hours of service work from the
23 extra board to the pool, is not about the 5:1 work
24 schedule itself. SMART is trying to muddy the waters
25 between the two separate aspects of the carrier's

1 proposal. SMART also says that the carrier's
2 proposal, "does not comply with the intent of the PEB
3 and that it's not permissible under Public Law 117."
4 It's unclear what this is referring to. Neither the
5 PEB nor the national agreement guarantees any specific
6 number set of set rest days.

7 So the union's proposal for a 5:2
8 work-rest schedule is on the extra boards. Again,
9 there's no question that this schedule would provide
10 predictability, but it does so at exorbitant cost.
11 The carrier's proposal, by contrast, gives employees
12 additional time off that they don't receive today
13 while balancing the needs of service.

14 MR. MUNRO: Okay. That brings us to
15 the next theme that the union hit upon yesterday. And
16 I'm addressing this because, again, this goes to a
17 technical point as opposed to an evidentiary one.
18 They've argued at some length in a series of slides,
19 starting with Slide Number 8 and running through
20 Slide 11 in their deck, that work-rest models under
21 the national agreement have to be voluntary.

22 They cannot be mandatory. They point
23 to language in the Q&A's. They point to language in
24 the text of the national agreement. Look, this is
25 just another red herring. We suspect that the union's

1 argument is a function of a typo in Carrier's
2 Exhibit 7, where we neglected to change the language
3 from mandatory to voluntary. But as explained in our
4 opening submission, the proposal is for voluntary work
5 rest.

6 We are not proposing a mandatory work
7 rest model for any segment of the workforce. And as
8 the board members will recall, we corrected this error
9 in a letter to the board on January 14th. So I
10 just -- I'm not sure how I could be more clear about
11 this, but I will state again for the record, we're not
12 proposing mandatory work rest. And as the union
13 knows, this was a massive concession on the part of
14 the railroad.

15 Union Pacific fought for a long time in
16 bargaining for a mandatory model. They think it would
17 be better, but we knew once we're going to
18 arbitration, we have to revise our position to match
19 the limits of the national agreement for this
20 arbitration process. That's why it switched from
21 mandatory to voluntary. Contrast that to the union's
22 position where they have not pulled down a single ask,
23 not one, that was outside the scope of the Board's
24 jurisdiction when we transitioned from bargaining to
25 arbitrator.

1 Let me give you just another example of
2 how they are doing the same thing, misunderstanding
3 what our proposals are. There's a line in the
4 presentation yesterday where they say that we're
5 proposing a one and done for the guarantee forfeit,
6 that if employees miss one day, they will sacrifice
7 their guarantee. But if you look at our Exhibit 7,
8 page 2, it says, in fact, forfeit occurs if there is
9 more than one occurrence. So again, this is just
10 another example of how the union is jousting with
11 straw men and not what the carrier is actually saying.
12 All right, the next subject will be addressed by
13 Mr. Janke.

14 WITNESS JANKE: All right. Thank you.

15 So I want to talk about here the claim
16 that the extra boards will be cut by 80% and how that
17 will work in practice.

18 So if you go to the next slide, you'll
19 see a table here. And what this table represents
20 is -- it's an analysis of the composition work that
21 the extra board actually performed in 2024. As you
22 can see on the other column at the bottom of that,
23 it's the second from the bottom of the page, 35% of
24 the work that the extra board performed in 2024, it's
25 not attached to any of the work that is assigned to

1 the pool.

2 So this could be things like covering
3 vacancies on a local train service that serves our
4 customers, potentially covering in a vacancy on an
5 assigned yard job or operating a train that's there to
6 perform -- to help support our maintenance activities
7 on the railroad. This work alone, that's 35% of the
8 work that the extra board performed in 2024 that is in
9 no way shape or form attached to the work pool. And
10 all of that work is going to remain tomorrow. So the
11 extra board is going to have to do that.

12 So how will the extra board support the
13 pool? As you know, pools are staffed to pool-turn
14 regulation requirements. With the self-supporting
15 pool, the pool will have additional starts associated
16 with hours of service work. That's the 49,000
17 additional starts. For regulation purposes, the pool
18 starts will not change as a result of the pool
19 initially covering a vacancy because the starts are
20 already in that calculation. As a result, the pool
21 will have more starts to regulate and cover and thus
22 the additional pool turns will need to be added.

23 So when the hours of service goes in,
24 that will go into the calculation and there's going to
25 be more miles there. And in order to stay within the

1 mileage regulation -- excuse me -- the start
2 regulation. My bad on using miles. I should have
3 said starts. In order to stay within the start
4 regulation, there's going to have to be more turns
5 added.

6 In addition to that, the pool will need
7 to cover the impact of the implemented scheduled
8 work-rest schedule. As we've discussed, scheduled
9 rest is going to require hundreds of people to be
10 added as Mr. Monroe identified a couple of slides ago.
11 In addition, pool-turn regulations do not account for
12 paid and unpaid time off that a pool turn employee
13 takes. So in 2024, this equates to the 18% of the
14 year. So that's the 365 days, times the 82%
15 availability we talked on Tuesday, that equals the 299
16 days that were in our original exhibits.

17 And that's the number we discussed.
18 Given that pool employees are only available 82% of
19 the time for their turn, the pool will become
20 exhausted as a result of unplanned pool vacancies,
21 either paid or unpaid. The extra board will need to
22 have enough employees to cover the unplanned pool
23 vacancies I just noted, and that this is going to
24 require that employees remain on the extra board to
25 cover that pool of work that will fall to them as a

1 result of those vacancies.

2 We estimate that we're going to
3 need 15- to 1600 people at a minimum, if you assume
4 what happened in 2024 on pool extra boards, going
5 forward to cover the following work. One, the work
6 from the pool that will fall to them as a result of
7 unplanned pool vacancies and the work the extra board
8 currently performs that is not associated with the
9 pool. That was the 35% I mentioned earlier.

10 The difference on the extra board today
11 versus tomorrow reflects the movement of employees
12 from the extra board to the pool to cover the
13 additional pool turns in the scheduled work-rest model
14 that's implemented. So I know the claims were made
15 about the 80%. In reality, and looking at the math,
16 it's not practical.

17 WITNESS POWELL: Okay. Referring to
18 SMART Slide Number 14, SMART claims that this Q&A
19 establishes that having self-supporting pools protect
20 hours-of-service relief work as the carrier has in
21 their proposal is contrary to the intent of the
22 national agreement. Asking whether employees in
23 self-supporting pools will be expected to protect
24 assignments outside of that self-supporting pool does
25 not mean that they cannot perform hours-of-service

1 relief work. It simply begs the question of which
2 assignments are within these self-supporting pool's
3 scope.

4 The carrier's proposal addresses that
5 question. The question of which group should handle
6 certain types of service. According to SMART's
7 definition that was described yesterday, irregular
8 service lacks a consistent schedule and is
9 unpredictable when one might be called for duty. This
10 description aligns with the same characteristics of
11 pool freight service.

12 Additionally, Mr. Edington explained
13 that hours of service refers to situations where a
14 pool crew exhausts their time and they have to stop
15 working on line of road before they reach their
16 destination, indicating that that is pool work and
17 this is just another pool crew completing that pool
18 work. Given these points, it's clear that the nature
19 of the work being described fits within the parameters
20 of the pool. Therefore, this supports the carrier's
21 argument that the work in question should be assigned
22 to the pool.

23 Next slide, please. Slide 16.
24 Abolishment of extra boards. So in this slide, I
25 would just like to point out -- that the carrier --

1 that does not need mutual consent to establish an
2 extra board. PEB250 specifically says that the
3 carrier has the right to establish and abolish an
4 extra board and it also has the right to regulate the
5 extra board based on ease of service. We know we do
6 not need any mutual consent to do that.

7 MR. MUNRO: And Jen, just to clarify,
8 this is the union's proposed language, correct?

9 THE WITNESS: Correct. Yes.

10 Okay. Now I'm going to turn to --
11 there's a few slides that are similar where SMART went
12 through the comparison of the vacancy procedures. And
13 there's a couple of points. One point I want to make
14 that's going to apply to all of these is this -- any
15 qualified employee, including management, as the last
16 step of the carrier's proposal, the carrier has
17 emphasized that voluntary rest days could reduce an
18 employee's availability, making it more challenging to
19 meet customer demands.

20 The carrier's objective to staff pools
21 and extra boards adequately ensures sufficient
22 manpower. However, providing additional time off
23 through rest days along with compensated days and
24 unapproved days could heighten the risk of not
25 fulfilling our customer's request. Mr. Svatos

1 mentioned on Tuesday an example of unavailability --
2 high unavailability in Kansas City that we experienced
3 a significant number of layoffs. Yeah.

4 So here's the chart from that
5 description that Mr. Svatos was describing on Tuesday.
6 And you can see down circled, there was four -- this
7 is on one particular day, 44% of our TE&Y employees in
8 the Kansas City hub were unavailable on January 6th.
9 The next day it was 31%. So when the carrier is
10 experiencing these high levels of unavailability on
11 any one given day, that causes extreme stress on
12 service.

13 Okay. We can go back to that slide,
14 please. Yes. Thank you. SMART characterized their
15 vacancy procedures as giving the carrier a broader use
16 of the road and yard extra board. But this all comes
17 with an added cost which they don't note here on these
18 slides. If you turn to SMART's proposal, their
19 Article 1B, Numbers 3 and 4, is what refers to how you
20 would fill a pool freight vacancy. The union's
21 proposal only allows us to fill it at the location of
22 the vacancy.

23 Mr. Edington mentioned the Salt Lake
24 hub yesterday and how large it was, so I'm going to
25 use that area as an example. So, today we have Ogden,

1 Utah, and Salt Lake, Utah, which are approximately 35
2 miles apart, and I may be off by a couple miles there.
3 But they're very -- they're fairly close. If the
4 extra board in Ogden is exhausted and a pool vacancy
5 in Ogden is needed to be filled, we would go to the
6 Salt Lake extra board to fill that pool vacancy in
7 Ogden.

8 SMART's proposal would prevent us from
9 doing that. In their Numbers 3 and 4 of their
10 Article 1B, the proposal -- if the pool is exhausted
11 and a made up term needs to be called, and the
12 protecting extra board is exhausted, we could be
13 forced to use another pool. So we'd be forced to use
14 the pool freight crew in Ogden, in that example, to
15 protect that service and also pay them a half a day
16 penalty in order to do that while we still have
17 extra-board employees available 35 miles away.

18 So not only would this generate
19 additional cost to the carrier, their proposal would
20 exhaust that other pool quicker and just exacerbate
21 the problem that we have. Conversely, SMART
22 mischaracterizes the carrier's proposal when it comes
23 to its proposed pool freight vacancy procedures. And
24 so they suggest here -- and I mentioned four -- that
25 the third step in this case would be to call any

1 qualified employee, including a management.

2 However, you will see in Article 7A2 of
3 the carrier's proposal, the provision states that when
4 an extra board is exhausted, the carrier will first
5 turn to a rested and available train person in
6 assigned or unassigned service at the location. If
7 there is no one, then we would go to the next rested
8 person at the next closest point of supply. So it
9 allows us to exhaust our options at the location and
10 then we can go to the next closest point of supply and
11 so on.

12 The carrier's proposal offers us
13 additional resources to fill these assignments more
14 effectively. Although Smart mentioned employee -- a
15 regularly assigned employee for this -- they mentioned
16 that we would use a regularly assigned employee for
17 this purpose, in practice, this would only occur if
18 there were no extra-board employees available, either
19 yard or road employees -- extra-board employees.

20 It's not practical to remove someone
21 from their regular duties when the customer is relying
22 on reliable service that that assigned job would give
23 them. Therefore, it makes no sense to utilize other
24 available resources before considering pulling an
25 employee off of their regular assignment.

1 Okay. Next slide. There you go.
2 Okay. So now I'm going to turn to
3 their proposal on filling a regular service, which is
4 filling the road extra board. So when your road extra
5 board is exhausted, who do you go to? Article 5 of
6 SMART's proposal provides the calling procedures,
7 again, if the road extra board is exhausted. What
8 they don't show on these slides is that their proposal
9 adds additional cost and a lot of steps, which takes
10 longer to fill an assignment.

11 If the road extra board is exhausted,
12 you would call -- under their proposal, you would call
13 a yard extra board, a person that is, essentially,
14 raising their hand saying I want to go to work. We
15 call this -- they desire extra work. So we would
16 first have to go and find who is raising their hand
17 and saying they want to protect this work. Then if
18 there is someone, we would call them and they would
19 get paid all of the earnings for that day over and
20 above their guarantee.

21 Now, if no one raised their hand, then
22 you would go and call the first out rested yard
23 extra-board, person and, again, they would get paid
24 for that day over and above their guarantee. But it
25 does not end there. If the carrier required a yard

1 extra-board employee to work in road service, which,
2 again, road extra boards get paid a higher rate of
3 guarantee than a yard extra board, the carrier would
4 be required to pay that yard extra-board employee, the
5 road extra board rate, the higher rate for that entire
6 pay half for working that one day in road service.

7 Next slide.

8 Now, this is the inverse of that. This
9 is the -- we have a yard extra board that is
10 exhausted. Can you have a road board protect that?
11 And yes, their proposal does allow us to do that, but,
12 again, it's with additional cost. So in their
13 example, when a yard extra board is exhausted, we can
14 call an employee on a regular assignment, a regular
15 yard assignment, and we would have to pay them
16 overtime for the entire day's pay.

17 Which, if they had worked five days
18 that week, they would be due the overtime for that
19 day. But SMART's proposal is unclear. That if we
20 call someone on a regular assignment, and they have
21 not had five starts that week, there would be no
22 reason to pay them overtime. But their proposal
23 indicates that we would regardless. Okay. So now if
24 that isn't an option, their proposal would go then to
25 the road extra board, and, again, all pay that they

1 made on that day would be over and above guaranteed.

2 Their proposal on their vacancy
3 procedures, all it does is add additional cost to the
4 carrier and additional steps, which takes longer to
5 fill those assignments.

6 MR. MUNRO: Okay. I'd like to address
7 one related point on this -- any qualified employee.
8 The Union made what is essentially a contract
9 interpretation or legal argument yesterday that --
10 that aspect of the carrier's proposal is barred or
11 improper. And again, as Jen indicated, we're talking
12 about the option of last resort, the circumstance
13 where there isn't anybody else available, you've got
14 to run the trains, and so what can the carrier do in
15 that circumstance.

16 And the union's position is, in part,
17 well, that's barred by existing agreements. That by
18 itself tells you nothing because this is an interest
19 arbitration proceeding, and we're talking about
20 implementing new rules and new procedures for
21 scheduling and filling vacancies. So the fact that
22 there are existing agreements is beside the point.
23 There are existing agreements that favor us that are
24 being changed through this process. So this tells you
25 nothing.

1 What their real point is, is that that
2 agreement can't be changed because Presidential
3 Emergency Board 250 -- this is the quote from their
4 Slide 24 -- recommends that the carriers withdraw
5 their proposal with respect to crew consist. Now,
6 with due respect to our colleagues on the other side,
7 they're mischaracterizing what was going on here.
8 This is the full quote from the PEB recommendation.
9 And this is, to some extent, a real tangent that this
10 board does not need to get into but just to briefly
11 explain.

12 The carriers had made a proposal in the
13 last bargaining round to change the size of crews.
14 Both sides have referenced this in their
15 presentations. There's currently two people on a
16 train. The carriers had proposed redeploying the
17 conductor from the train so that they could work from
18 the ground so there wouldn't necessarily only be one
19 person in the cab of the locomotive and the conductors
20 would work elsewhere.

21 The carriers made that proposal at two
22 different levels. They proposed it in national
23 handling, which, as Mr. Branon explained yesterday, is
24 the process of a coalition of carriers all working
25 together to reach one agreement, and they also

1 proposed it at the individual carrier specific level.
2 Why did they do that? Because there's a whole, long,
3 legal framework to this where Courts have said that
4 crew-size bargaining has to happen at the local level.
5 And so what we said to the union was,
6 look, if you want to talk about it at the national
7 level voluntarily, we're happy to do that, and then --
8 but if you're not, we'll talk about it at the local
9 level. When we got to the PEB, what we said was there
10 was an earlier Presidential Emergency Board that had
11 bypassed those principles and said, look, this needs a
12 solution, just go arbitrate.
13 And so we said, you should do that at
14 the national level. The Board said, no. That's what
15 it's saying in the non-highlighted section, the
16 language that the union quoted. The Board said, we're
17 not going to do that, you can't get a nationwide
18 resolution to this problem. But they didn't say that
19 the proposal had to be withdrawn at the local level.
20 So issues pertaining to crew size, even if you assume
21 that the rule about using any qualified employee would
22 impact crew size, and I think that that's debatable,
23 it would not be barred by anything that the PEB says.
24 So the union's argument that there is some legal
25 restriction on that proposal, it's not true.

1 WITNESS SVATOS: Good morning. I'll
2 spend a couple slides here discussing pool-mileage
3 regulation.

4 Can we go to the next slide.

5 The organization presented this slide
6 comparing the starts ranges under each pool's
7 regulation proposal. Recall that the carrier's
8 proposed start ranges are lower because we're
9 adjusting them to account for rest days. We reduced
10 the union's proposed start ranges by 16.7% to reflect
11 the additional unavailability by a 5:1 work-rest
12 schedule.

13 The union claimed that the carrier's
14 proposed ranges would reduce earnings by the amount
15 shown in the last call. We do not agree with that.
16 To get to those reduction numbers, the union did not
17 compare Union Pacific start ranges to the union's
18 proposed ranges. Instead, the union compared the
19 lower end of Union Pacific's proposed ranges, not the
20 midpoint, which is the real target goal, and they used
21 an arbitrary current starts number as shown in the
22 second column.

23 The net of this is -- the net of this
24 is that the union statement that the carrier's
25 proposed start ranges would result in the reduction of

1 earnings shown in the column is not supported by data.
2 I do want to be clear. We do not dispute that the
3 lower start ranges, on average, will result in
4 employee -- individual employees earning less, but
5 that's true on either side's work-rest proposal.
6 Assuming rest is properly factored in the pool
7 mileage -- or pool-starts regulation, the lower
8 earnings are a function of the fact that employees are
9 getting more time off. It is a tradeoff.

10 Next slide. We'll do the next one.

11 This slide will talk through the starts
12 ranges and compare our start's regulation to the
13 organization's regulation. This is a real example
14 that we pulled last night for the last 20 days for a
15 pool that is between Cheyenne, Wyoming, and Rawlins,
16 Wyoming. The distance of this pool is 176 miles.
17 Employees currently assigned to the pool are 27. And
18 during the look-back period over that 20-day period,
19 there's 380 starts.

20 For this model, we assume there's a 5:1
21 schedule, which would mean a 16.7 reduction in
22 availability. I'll talk through Union Pacific's
23 starts range now. So looking at the UP side, in our
24 starts, we factor 380. That's the 20-day look-back
25 period. You multiply that times 1.5; that gets you

1 the 30-day prorated starts of 570. Our midpoint for a
2 pool that is 176 miles is 17.45. We assume at all
3 times all employees are observing rest days. That
4 comes out to the pool needing 32.6 pool turns. That
5 would be how many employees would be assigned to the
6 pool.

7 I'm now going to jump over to the SMART
8 model. We agree, on the starts range, are the number
9 of starts, 380, the monthly factor of 1.5, and the
10 prorated starts that come out to 570. The midpoint
11 for Smart is 21. That would mean, on SMART's model,
12 they need 27 pool turns in the pool. Now, let's add
13 the look-ahead factor that we've talked about multiple
14 times over the course.

15 On Union Pacific's model, our baseline
16 pool starts are 32. We assume a 5% max could use the
17 prearranged look-ahead factor. That comes out to
18 needing an additional two employees assigned to that
19 pool to allow the max number, or let's assume that 5%
20 for that 7-day look period were taking the prearranged
21 vacation days or personal leave days. That would mean
22 that pool would go from 32.66 to 34.66. So it could
23 fluctuate week to week, assuming starts are level up
24 or down between zero and two people.

25 Now, using the organization's proposal.

1 Their proposed prearranged max is 25%. That would
2 equate to needing an additional seven employees to
3 support that 25% increase on prearranged. By not
4 factoring in the rest days at the beginning -- at max,
5 they would need an additional four employees to
6 account for the rest days. That would mean the
7 organization week to week, if starts were flat, based
8 strictly on not assuming rest days are always in the
9 pool, and with a 25% prearranged that that pool could
10 fluctuate between 0 and 11 people every single week.
11 That is one pool.

12 Next slide. Using that exact same
13 math, we'll walk through what the impact of this would
14 be across the system. The starting assumption is
15 there's 2,608 employees in pool service today. With
16 our prearranged factor of between 0 and 5%, that
17 means, on the system level, the pools can fluctuate up
18 or down 130 people, assuming starts are flat. Since
19 we consider the rest-day factor 100% of the time, we
20 would show 435 people more in the pool at all times.
21 Which would mean, in Union Pacific's model, we could
22 fluctuate up or down start, assuming starts are
23 flat, 130 individuals in the pool.

24 Now looking at SMART's model with
25 their 25% prearranged and the rest day factor not

1 being factored in, their pool miles, assuming pool
2 starts are flat, they could fluctuate between zero and
3 just over a thousand individuals week to week. If
4 they went from the max number of employees using the
5 prearranged and the max number of employees using the
6 rest time.

7 So what's this do in practice? This is
8 going to become completely unworkable quickly. This
9 will cause massive shifts in the workforce. It will
10 generate hundreds of displacements at all times,
11 which, in turn, will prevent employees from actually
12 being able to observe the rest days that they have
13 scheduled due to the fluctuation in the workforce.

14 Jen will talk later about the timeline
15 and how the work rules play into this. But to quickly
16 look at it, what this is, is on the UP, Sunday, this
17 is a walkthrough of looking at the prearranged, the
18 adjustment, and how employees would move. This is
19 just a very high level. So on the UP proposal, on
20 Sunday, we would see how many employees have upcoming
21 prearranged days. On Wednesday, we would adjust the
22 pools based on the regulating factors.

23 On Thursday, employees, if there was a
24 no-bid assignment, would be bumped because we have
25 a 24-hour bump. On Friday, they would potentially be

1 forced to have an employee in place on Saturday to
2 work. Under SMART's proposal, with the manpower
3 bulletins, the travel time, and the limited ability to
4 move employees across the hub, what you would see
5 happen, in week one, we'd still be notified of the
6 prearranged.

7 On Wednesday we look at the
8 adjustments, and if there's no bids, we would have to
9 post a manpower bulletin. That manpower bulletin
10 would be up Wednesday through Saturday. On Sunday, we
11 notify those employees they begin traveling to become
12 available on Tuesday. But no, those employees are not
13 in place before even the next adjustment period comes
14 up. With the swings of upwards of a thousand people,
15 which is a max, you -- we will constantly have
16 employees in limbo going back and forth between
17 assignments.

18 Next slide. Next slide. Next slide.

19 Yesterday we heard from all the
20 organization's witnesses about the variability in
21 pool-freight operations due to the 24/7 unscheduled
22 nature of the trains. We acknowledge this issue, but
23 our focus today is determining on when employees will
24 be granted voluntary rest days within that operation.
25 Both parties can present schedules showing how the

1 system could work, but the core question remains.
2 Will employees still be subject to the variability of
3 the train schedule? The answer is yes. Under both
4 Union Pacific's and the organization's model, it is a
5 yes. Neither side can change that.

6 We can address today, is if we are
7 providing employees predictability regarding when they
8 can be expected to be unavailable for a call. Our
9 proposed 5:1 schedule does exactly that. A
10 standardized approach works because it allows
11 employees to review a calendar and reasonably
12 anticipate when their voluntary rest days will occur,
13 making them unavailable for calls. This schedule will
14 provide employees with additional 61 days off or
15 equivalent over the course of a year, about 8.5 weeks
16 of unavailable time, enabling them to better plan
17 their personal lives.

18 And then I want to point out one thing
19 on this slide. So this was shown as, highlighted in
20 red there, on our schedule that because an employee
21 took a trip on the 10th, and I believe the 10th was
22 supposed to be one of the voluntary rest days, and
23 then was forced to take a vacation day because he
24 missed his rest day, what would actually happen in our
25 proposal is when that employee tied back up at the

1 home terminal, they would begin their rest day. They
2 wouldn't be forced to take a vacation day like is
3 shown on this.

4 WITNESS POWELL: Okay. I'm going to
5 change yours a little --

6 Are there any questions so far? Doug
7 went over a lot there.

8 ARBITRATOR: Pardon me.

9 WITNESS POWELL: Doug went over a lot.
10 Do you have any questions so far?

11 ARBITRATOR: No.

12 WITNESS POWELL: Okay. Okay. We'll
13 move on to SMART's presented this slide in regard to
14 that they want to preserve, you know, certain rules
15 and that we're trying to eliminate certain rules.

16 First, in relation to --

17 ARBITRATOR: Where is this slide? Is
18 there a number?

19 WITNESS POWELL: I'm showing Slide 46
20 of their slide deck from yesterday.

21 So in regard to turn rest, now, we have
22 different rules and they have a lot of different
23 names. There's turn rest, there's extra rest, there's
24 extending rest, there's a lot of different things. So
25 I first want to clarify one thing. Yesterday

1 Mr. Edington was mentioning a different rule provision
2 that's called extra rest. And that is something
3 specific to the territory, UP Eastern District
4 territory, that he is the general chairperson of.

5 That is not what our proposal is
6 talking about. Our proposal -- and we don't propose
7 to eliminate that provision. Our proposal is talking
8 about something called turn rest which is completely
9 different than extra rest. It only applies to one
10 territory, the MOP upper lines. And basically what
11 turn rest is, is, if you go back to Doug's board
12 presentation on Tuesday, if there's a vacancy in the
13 pool, you remember the person will come off, but that
14 turn is still there. And the extra board will take
15 that person's turn with them and then it comes back.
16 So what turn rest is, is when that extra-board person
17 takes that turn out, and then the turn returns back to
18 the board at home.

19 That turn actually gets rest associated
20 with it by agreement, not the person. The extra-board
21 person will go back to the extra board, but that
22 turn -- so when the regular assigned person, those two
23 that turn, they have to wait for that turn itself to
24 become rested. It's a rule, again, that's unique to
25 one specific location. Our proposal was to clarify

1 that that rule is going to be eliminated and just,
2 inherently, by how self-supporting pools will operate
3 going forward, there will be no one taking a turn
4 anymore or covering another person's turn because when
5 there is a vacancy in the pool, you're just going to
6 go to the next person in line. So our purpose
7 proposal is just clarifying that that provision is no
8 longer applicable and that will be eliminated.

9 So turning to the earned days off, the
10 union is requesting in their proposal, 24 more days
11 off per year for non-guaranteed pools. And for
12 guaranteed pools, they're asking for 12 days off per
13 year without a deduction in guarantee. First, none of
14 that is within the scope of the PEB, and we are
15 already providing pools within our 511 proposal, an
16 additional 61 days off, by giving them the rest days
17 as Doug just mentioned.

18 So they propose that they can take
19 these days off and that they are taking them on
20 demand. Except there are some exceptions on certain
21 holidays where, if the manpower doesn't allow, the
22 carrier can deny them. But I'll refer you back to
23 that Kansas City example -- where there was 44%
24 layoffs on the 6th, which was a Monday. And it was a
25 football game day; I will just say that. So that day,

1 if people wanted to take our earned day off, we would
2 not be able to deny it because it wasn't one of the
3 specified holidays that's listed.

4 Mr. Edington also mentioned that this
5 is given to employees for perfect attendance, but
6 that's really not what their proposal reflects. Their
7 definition of perfect attendance includes excluding a
8 number of absences, such as vacation, bereavement
9 leave, FMLA, laying off for union business, and so on.
10 So when they say perfect attendance, an employee can
11 essentially still earn an earned day off if they're on
12 vacation for most of that pay period.

13 EDOs are just another leave entitlement
14 that gives employees the ability to choose when they
15 want to go to work. The BNSF that does have the EDOs,
16 as SMART mentioned yesterday as a comparison, has
17 shared with us that they really have not seen any
18 improved availability by affording EDOs since its
19 implementation. So finally, I want to point out that
20 there is another provision in there saying that if
21 they do not use their EDOs, they get paid out at the
22 end of the year. Again, that's just more cost to the
23 carrier.

24 Next slide. Okay. So, I'm sorry. So
25 this slide is just to point out the fact that their

1 proposal says we do not have rest outside of RSA, but
2 we actually do have rest as you can see here. If the
3 employee on the extra board does not utilize a
4 voluntary rest day, and they get those six consecutive
5 starts, under the Federal Safety Act, that they would
6 go into federal required rest, which is the 48 hours
7 off.

8 Okay. Regarding the trading turn
9 slide, which is their Slide 47, we both agree on
10 providing trade turns to pool employees. There's some
11 issues that they raise with the details in the
12 agreement, but I'm not going to spend any time on
13 that. Those types of details are typically worked out
14 through, you know, implementation of these types of
15 rules.

16 But the important thing I'd like you to
17 take away, Madam Chairman -- Chairperson, is that
18 limiting this to non-guaranteed pool freight only is
19 the important piece. So SMART said yesterday,
20 guaranteed pools should not be treated differently and
21 that it's unfair to treat them otherwise. But the
22 fact that guaranteed pools are different, they are
23 paid for availability just like an extra board. They
24 have a minimum wage, and they are guaranteed every pay
25 half.

1 Allowing them to move their turns to a
2 lower position is making them unavailable for a longer
3 period of time. So, as I said again, we pay guarantee
4 for availability. We should not be required to pay
5 guarantee or this trade turn option on guarantee
6 pools.

7 Next, in regard to prearranged days,
8 you know, we agree on a number of things surrounding
9 prearranged, the guardrails, ability to prearrange at
10 six months in advance. Where we do not agree is on
11 the thresholds, and Doug talked about that a little
12 bit earlier. So as stated, we're providing
13 employees 61 more days off with rest than they have
14 today. SMART in their proposal, with the 4:1, is 73
15 days off more a year, and they're asking for the 25%
16 off layoff threshold.

17 Again, this would allow a quarter of
18 our pool freight workforce to be off on any particular
19 day causing a massive movement of people week to week
20 as Doug just pointed out on top of having additional
21 rest days. And finally, on the prearranged, I just
22 want to point out the fact we have provided some data
23 here of the from 2019 to 2024, the extra-board
24 unavailability by day of week. And you can see here
25 how it swings from the weekend days compared to its

1 lower during the week. And the point we just want to
2 make here is, yes, we acknowledge that if it's a 25%
3 threshold, that doesn't mean 25% of our workforce can
4 even schedule every single day, but likely what we
5 would see here is that they're going to be using it
6 more on the weekends, again, when we have more
7 unavailability in general and are more in need to
8 protect those assignments.

9 WITNESS JANKE: Can I add something?

10 So one thing that's not on this slide,
11 but from my prior life. The thing that makes this
12 even more impactful is that we have a larger increase
13 in the demand to run trains on Saturdays and Sundays
14 as well. Higher layoffs, more trains to run, it just
15 has the chance to compound on itself.

16 WITNESS POWELL: Okay. We'll move on
17 to the automated bid scheduling, which is included as
18 a side letter in SMART's proposal. And here, this is
19 where they're comparing their proposal to our
20 proposal. And I just -- I'm not going to hit every
21 single point here. I know there's a lot included in
22 here, so I'm just going to hit on a few points. So
23 under Smart TD's rules, they say that the standard bid
24 process has no specific day or time. And that's
25 really not true.

1 UP's proposal has no specified date or
2 time when newly established assignments are awarded.
3 However, it's a 72-hour period. And so when that
4 72-hour period ends, that's when those positions would
5 be awarded. The union's proposal says that those new
6 assignments would be assigned at the time the bulletin
7 closes, which would be at 10:00 a.m. Central. So why
8 is this -- why is the carrier's proposal better of the
9 two options? So one, 10:00 a.m. is just an arbitrary
10 time of day. Waiting until then to award a position
11 every single time, regardless of when the position is
12 awarded, could lead to unnecessary delays in filling
13 the position and increase the reliance on the extra
14 board.

15 Under the new assignment section, one
16 of the differences I'd like to point out is that on
17 the union's proposal, the yard-extra assignments where
18 we have to bulletin, if it's run three or more days in
19 a week period, we have to bulletin as a regular
20 assignment while the carrier has no limit on extra
21 assignments. And that, again, is false. That's not
22 true. The existing rules would stay in place on when
23 we would have to bulletin an extra assignment. The
24 existing rules do vary across the system.

25 The three or more that the union is

1 proposing actually is our most restrictive rule. So
2 again, they're trying to spread the most restrictive
3 rule across the whole system. Union's proposal is
4 creating some inefficiencies in adding new positions
5 that may not be needed. Related to re-bulletining
6 assignments, the union's proposal lowers the threshold
7 for which positions would need to be re-bulletined.
8 And again, re-bulletining positions often creates more
9 potential for displacements. So then you see that
10 more unavailability time. The union's proposal would
11 increase that and our proposal was designed to reduce
12 those displacements.

13 Next slide.

14 Turning to the bidding process, the
15 union's proposal limits where an employee can be
16 forced and is substantially more restrictive than our
17 current rules today. The union makes the claim that
18 carrier's proposed forcing rules are punitive to
19 employees. But the carrier is not requiring or asking
20 an employee to go anywhere that their seniority does
21 not already allow them to go today.

22 Comparing the two proposals on how we
23 force employees to no-bid assignments vastly differs
24 from SMART's proposal and is unworkable. So if you
25 remember Doug's timeline that he showed on how no-bid

1 assignments were placed, their proposal takes
2 significantly longer. Ours took a couple of days to
3 get an employee into a position, forced into a
4 position, while there's --

5 If we could go back to that slide,
6 maybe. There we go.

7 So as you see, UP's proposal in this
8 bottom is the timeline of when we notify someone, if
9 someone is -- did not put a bid in for assignment and
10 we can pull them to an assignment, you can see when we
11 make the adjustment on Wednesdays, someone gets bumped
12 because they can't hold that assignment anymore.
13 Maybe they don't have any bids in. So now where do
14 they go? We can force them by Friday and they're
15 working by Saturday.

16 Under SMART's Proposal, one, we can
17 only look at the location that they're working, and we
18 can't force them to anywhere outside. But if we do
19 need a force -- if we do need a person somewhere
20 outside of their location, we would have to put this
21 manpower bulletin up. That's what that NPB is. We'd
22 have to put up a manpower bulletin. There'd be a
23 process that we'd have to wait to award that. Then
24 we'd have to notify the employee. Then they'd get
25 travel time. And then by the time they even get to

1 where they need to go, we're adjusting the boards
2 again.

3 And then remember, we have that huge
4 swing of individuals across the system that we're now
5 having to adjust for due to the prearranged factors in
6 our regulation, that's just going to be continuous and
7 happen over and over and over again. We're never
8 going to get people on assignments where they need to
9 be.

10 The final point I want to make to that
11 is really the union is effectively trying to modify
12 their existing seniority boundaries by making them
13 smaller. Employees -- those boundaries are negotiated
14 and have been negotiated years ago. If they want
15 those seniority boundaries to be smaller, they need
16 to, you know, negotiate that right to do that. The
17 boundaries that an employee protects is to provide
18 them job opportunities. But in return for that, there
19 is also providing us a workforce to be able to work
20 those jobs.

21 Okay. No-bid assignments. So the
22 union's proposal, again, puts more restrictions on who
23 can be used to fill a no-bid assignment. So again,
24 why does this matter? Well, it takes people longer to
25 get where we need them. And Article 6 is intended to

1 increase efficiency when it comes to awarding
2 assignments, and the union's proposal is decreasing
3 that efficiency.

4 Temping assignments. So the carrier is
5 proposing to eliminate temping or any pass-up rules.
6 So temping is bidding on a job that is temporarily
7 vacant. We have proposed to eliminate those rules
8 because, again, by having those rules, that's just
9 increasing movement from one position to another.
10 It's adding displacements into the workforce and
11 unpredictability for employees. That is why the
12 carrier is proposing we eliminate these rules.

13 Next slide. Notification. So the
14 carrier's proposed changing displacement notification
15 rules, where we have -- after eight hours, if they're
16 not accepting notification, then they're going to be
17 considered notified and the 24 hour bump period would
18 start at that point. The current -- the union
19 mentioned yesterday that the current process, it works
20 fine. And really, that may be the case in some cases
21 but not in many others.

22 So the problem is the rules today allow
23 some employees to gain the system to where they avoid
24 answering the phone, they avoid taking notification,
25 which is giving them more time off. If the system

1 worked fine today, there'd be no reason for the union
2 to propose a rule that says you're considered notified
3 after eight hours, the time CMS calls and contacts all
4 the numbers on your screen here. This starts the next
5 session.

6 MR. MUNRO: Madam Chair, with the
7 board's permission, we propose a 1, 5,
8 or 10. 10-minute break.

9 ARBITRATOR: 10-minute break? Good
10 idea. Let's take a 10 minute break.

11 (Whereupon, a break was taken
12 at 10:08 a.m.)

13 (Back on the record at 10:22 a.m.)

14 ARBITRATOR: Back on the record.

15 MR. MUNRO: Thank you, Madam Chair. We
16 will continue with the carrier's rebuttal case.

17 WITNESS POWELL: And Madam Chair, I
18 just want to correct one thing I said towards the end
19 of my statements that was making before we took a
20 break. When I was referring to the notification
21 period of time, I think I said the union proposed
22 eight hours. What I meant to say is union opposes.
23 So I misspoke there. And the point I was trying to
24 make there is that the carrier is proposing the
25 notification after eight hours bumped. And if it's

1 working fine as the union claims, why would we be
2 suggesting to change that rule? That's the point I
3 was trying to make there.

4 So, okay. We'll move on. Next, I'm
5 going to turn to what the union is calling work-rule
6 concessions. The union is trying to suggest here by
7 calling it work-rule suggestion that these proposals
8 are outside of the scope of 5, 6 and 7, which is not
9 true. So I'm not going to touch on every single one
10 of these. We've talked about these in other parts of
11 our testimony today, but I do want to refer to, on
12 this slide specifically, the daily preference boards,
13 which was talked about yesterday at length.

14 So Article 6 does allow us to change
15 how daily preference boards operates because it is a
16 way of awarding jobs to employees, which is the whole
17 purpose of our enhanced standing-bid agreement.
18 Article 6 authorizes the establishment of an automated
19 system and a standardized process for awarding jobs.
20 Since this system aims to improve efficiencies
21 compared to traditional methods, SMART has shared
22 their experience as working as conductors and brakemen
23 during their testimony yesterday.

24 So I'd like to share my own experience
25 to highlight the need for this modernization. When I

1 joined the railroad in 2004, my initial role was as a
2 crew caller and the desk that I work was called the
3 Ripple Desk, which is calling this daily preference
4 work. It was responsible to fill the yard jobs in
5 North Platte, Nebraska and Council Bluffs, Iowa.

6 This was a daunting task, to say the
7 least, given the high number of positions that needed
8 to be filled. The desk has earned this name, the
9 Ripple Desk, because of the process that's involved.
10 There is a bid sheet for every single employee that's
11 stored in a binder. It's all paper, stored in a
12 binder, and the binder is about eight inches thick.

13 And so when a vacancy arose, the
14 caller, which was me at the time, had to start the
15 very first page in that binder, because that's the
16 most -- it was listed in seniority. So the senior
17 person was at the top; the least senior was at the
18 bottom of this stack of documents. When there was a
19 vacancy, the caller had to start at the very beginning
20 of the binder and ask, in seniority order, if the
21 employee wanted to work that vacancy. Now, if they
22 did, then now their assignment was also vacant, and we
23 had to do that same process again.

24 That's why it was a ripple effect. So
25 when one person would move up to a new assignment,

1 then you'd have to call the next senior person and see
2 if they wanted their assignment. That was just --
3 that whole process continued until all jobs were
4 filled, and it took hours to do. Again, this method
5 is outdated and inefficient and unfortunately this
6 same binder system is used today, two decades later.

7 Implementing an automated bid system
8 would significantly streamline this process, reduce
9 the time and effort that's required to fill these
10 vacancies, and improve overall operational efficiency.
11 Daily preference boards are exceptions to the general
12 rule on how we fill yard assignments today. Again, we
13 mentioned there's some -- a few yards that have this
14 process, so there's no reason why yard jobs are
15 awarded through this process and could not be awarded
16 in this exact same manner as other jobs are awarded
17 and without the administrative hassle.

18 Next, I'm going to turn to the
19 reduction in our proposal to 24-hour displacement
20 period. Article 6 was designed largely to reduce
21 displacement time. Carrier's work-rule submission to
22 PEB250, in advocating for Article 6, explicitly says
23 "by substantially decreasing displacements, automated"
24 bid scheduling -- excuse me -- "automated bidding
25 substantially increases availability." And that can

1 be found in carriers Exhibit 32. There's no question
2 that the proposed -- proposal within -- is within the
3 scope of Article 6.

4 I'm sorry. I do have one more thing.
5 This is -- I just want to make a note here. The only
6 thing I want to call out is I think SMART is
7 mischaracterizing the intent of the note that we
8 provided in Article 7, 6. It's a note that basically
9 is retaining our existing to use various kinds of
10 service, which we have rights today under national
11 rules and other rules to use different types of
12 service. So the purpose of that note is just to
13 retain the rights that we have today.

14 WITNESS JANKE: All right. Now I want
15 to talk a little bit about the costing this first
16 slide has held away from home terminal. So as SMART
17 pointed out yesterday, and as I talked about on
18 Tuesday, that there was a mislabeling on this slide.
19 So we talked about that on Tuesday. The incremental
20 hours are 739,000 at the \$41 rate totaling 30.2
21 million. The calculation is correct; the labeling was
22 wrong. The case remains that the estimated cost for
23 this proposal is roughly \$30 million.

24 If you go to the next slide. So this
25 is -- I just want to, kind of, give my thoughts on

1 where we're at. So SMART's financial analysis is
2 incomplete. On the page, what you see is all of the
3 different proposals that they have. And then on the
4 right-hand side is commentary about what has and has
5 not been included by Smart within their analysis. And
6 so what you see is that the only thing that they gave
7 you a financial analysis on was the impact of
8 scheduled rest for pool only.

9 There's nothing in there, in the
10 material that's been provided about extra boards as
11 well as the other 15 items. There is no financial
12 analysis that identifies or tries to lay out the cost
13 for those proposals. So now this next page is just
14 kind of a different way of thinking about it. It's a
15 comparison of how each party handled some of the key
16 financial issues and how we view the world
17 differently.

18 So starting at the top, extra boards.
19 We included them as having an impact; SMART did not.
20 They're part of appendix B. Carrying costs. We
21 talked at length about this on Tuesday and the
22 differences line by line from what we believe should
23 be included versus what they believe should be
24 included. Expected earnings. As we talked about, the
25 company is going to pay earnings to the individuals

1 that do the -- that do the crew start, that do the
2 work. The work is not disappearing and thus the
3 earnings paid to employees is going to remain the same
4 in total. It is still a financial obligation for the
5 company. So there are no savings associated with
6 earnings for running trains.

7 Guarantee. SMART's not included any
8 estimate on the impact of -- potential impact of
9 guarantee, partially, because they didn't give you any
10 analysis on the extra boards and as well as, not only
11 for scheduled rest, but for any of the items on
12 Articles 3 to 15. And then lastly, all of the wage
13 increases. There were no estimates with regards to
14 what the expected cost of that was.

15 All right. Yesterday there was a
16 statement made that both parties have the same view of
17 the rest factor. And as I go through the material one
18 more time, that does not appear to be the case. It
19 does appear to be the case on page 67, which was a
20 discussion about the regulation calculation. Where
21 SMART, and you can see I clipped it out there on the
22 upper left, on the 5:2 model for regulation purposes,
23 SMART identifies that there needs to be a 29%
24 adjustment.

25 In the middle, for a 6:3 model, SMART

1 identifies and used a 33% adjustment factor for
2 regulating the pools. So we agree with those two
3 numbers. A 6:3 model, 3 out of 9 days is 33% of the
4 times off. However, when you go to page 62, this is
5 where SMART begins to outline the financial impact of
6 their proposal for pool employees only. You can see
7 in the middle column, where it talks about a 6:3
8 model, it talks about the use of a 25% factor. And
9 that that saves 650 -- or that means that 658
10 additional employees will need to be added.

11 So if you go to the next page, I'm
12 going to link Slide 62, which I just reviewed with
13 you, to what's on page 63, which is where they
14 calculated their financial results. So this is where
15 the math is at. So I carried over page 62 from the
16 bottom of the prior slide to the top of this slide.
17 You can see the 25% reduction; that's the risk factor.
18 You can see the 658 additional employees that need to
19 be added on what was on page 62.

20 Now, if you look to the bottom right on
21 page 63 and what's boxed in on red. So a couple
22 things here. So you can see -- you can see the 25%.
23 You can see the 658 in dark blue at the bottom. And
24 then when you get into the earnings section. So on
25 page 60 of their presentation from yesterday, they

1 identified the earnings of these employees to
2 be 124,000 and the fringe benefits to be 77,000.
3 That's a total of \$201,000 per employee.

4 When you take the \$201,000 per employee
5 times the 658 employees, this equates to \$132,258,000,
6 which is the very number at the bottom of the page.
7 This clearly shows that SMART's financial analysis
8 used a 25% as the rest factor for the 6:3 model, not
9 the 33% that was utilized on the pool -- for pool
10 regulation purposes on page 67, which I showed on the
11 prior slide.

12 Any questions about that?

13 ARBITRATOR: I don't think so.

14 WITNESS JANKE: Okay. So if you go to
15 the next page.

16 ARBITRATOR: My question is -- my
17 question is some of these are modified slides. Will
18 they be passed out as well, or -- are you -- I know
19 yesterday, you -- subsequent to your presentation, you
20 provided a handout. Will you be providing that today?
21 I'm not requesting it. I just want to know what your
22 intent is.

23 MR. MUNRO: Yes, ma'am. We're happy to
24 provide copies. This is -- This was done, obviously,
25 overnight, so we just haven't had time to print them

1 yet, but we -- we will do so. And certainly if the
2 board would like copies, we're happy to provide them.

3 ARBITRATOR: Thank you.

4 WITNESS JANKE: Okay. So moving to the
5 next slide, what I did here is I took page 63, which
6 we just reviewed, showing 25%, 658 additional people
7 needed, and right above the 658 is the 3,291. And
8 then to page 72, you can see that they're talking
9 about, here's what the future workforce looks like for
10 a 6:3 model, 3,291 ties to the use of the 25%. As
11 we've talked about here for a couple of days, you
12 know, by using 25% in their financial analysis, even
13 if we agreed on fringe benefits and all the other
14 stuff, this means SMART has understated the number of
15 employees needed to implement and execute a scheduled
16 work-rest model for the pool.

17 In this case, it's a 6:3 model, but
18 their math has understated the head count impacts. If
19 you go to the next slide, this is getting back to
20 extra-board cost savings. And I talked a little bit
21 earlier about what's going to happen to the extra
22 board and what will remain on the extra board. But in
23 the end, any savings they have identified off of the
24 extra board, they're just not real. Let's walk
25 through the math on the slide.

1 So the head count, SMART is claiming
2 that the extra board will be reduced by 80%. I know
3 that was based off of a statement. The math here is,
4 is that if you see -- you see the 1,921 on the fourth
5 column from the left, that is the average extra-board
6 count. If you multiply that by 20%, and the second
7 from the left, you see 385 people remain. That is the
8 claim of a reduction on the extra board of 1,565
9 people.

10 On page 68, SMART's proposal from
11 yesterday, they identified that earnings for
12 extra-board employees were \$135,000, \$77,000 for
13 fringe benefits, for a total of \$212,000 per employee.
14 If you apply. If you multiply 1,565 times \$212,000
15 employees, employee per employee, you
16 get \$331,780,000. That's comparable. I'm guessing
17 there's some rounding going on. But if you look at
18 the fifth column from the left, 80% cut plus benefits
19 saves \$325.6 million. Those numbers are basically
20 right on top of each other.

21 This most importantly shows that their
22 savings analysis uses a head count of 1565 employees,
23 which is not going to happen. And the financial
24 factors include earnings of the employees, which will
25 still be a financial obligation for the company to

1 whatever employee ends up running that train. I'll
2 just close with, you know, if the extra boards are
3 reduced, that does not -- just a reminder -- that
4 doesn't mean that the employee is no longer working
5 for the company. Employees no longer needed on the
6 extra board will be needed on the pool to cover
7 additional pool turns that we discussed and the impact
8 of scheduled rest.

9 Thus, Union Pacific will still have
10 employees on the payroll and the carrying cost will
11 remain a financial obligation for the company. There
12 is literally no savings. Okay. You're on this slide.
13 So here's page 73. This was a slide that SMART
14 produced yesterday that tried to tie all -- everything
15 together with, hey, here's the cost of scheduled rest
16 on the left, here's the savings from the extra board
17 on the right -- in the middle, on the right,
18 there's \$217 million of quid pro quo. As I just
19 discussed, the savings are not real. When you remove
20 the savings in the middle, because the employees are
21 still there, the earnings are still being paid, all
22 that remains is cost for the carrier.

23 All right. Moving to the next slide on
24 attrition and new hires. I know SMART came in and
25 corrected some of the numbers here later on in the

1 afternoon. The January to November, when you add up
2 all of those numbers in total, it shows that hires net
3 of attrition that we added almost 700 people in 2023
4 with the two columns in the middle. This is in line
5 with the head count differences. It's about 900.
6 Part of why they're not matching is that the head
7 counts that we report to the STB, which are very
8 strictly -- they strictly request certain things.
9 There are movements of employees within the employee
10 base that are not included. So things such as
11 employees coming back from leave or coming from an
12 inactive service to an active service. So that's why
13 those numbers don't tie out Exactly.

14 And then I would offer up, I don't know
15 why they -- don't have the December report. If they
16 would like it, I'm sure we can send it back to them.

17 And then lastly, this is something
18 that, yesterday, there were claims that were made that
19 Union Pacific has a TE&Y attrition issue and that our
20 crew boards are not staffed appropriately and maybe
21 that our competitors is better staffed. The data you
22 see on this page is the number of trains holding for
23 crew per day as reported by the BNSF and Union Pacific
24 to the STB. So the BN's on top; UP's on the bottom.

25 While the methodologies between the two

1 roads may be different, the methodology for each road
2 has been consistent over time. In my previous role in
3 network and capital planning for the last 10 years, my
4 team had responsibility for the operating metrics that
5 got reported by the railroad. And we were responsible
6 for producing and verifying the specific data that's
7 provided to the STB.

8 I have personally been to Washington
9 D.C. to talk to STB staff about how these numbers are
10 calculated and get reported. The color coding
11 compares the trains holding for each respective row
12 from 2019 through 2024. So you got the six years as
13 rows; you've got by month as your columns. I've color
14 coded it to show that green -- when a cell is in
15 green, that means fewer trains are being held. Red
16 and yellow mean more trains are being held relative to
17 each respective road's prior performance over the past
18 six years.

19 You can see on the bottom that Union
20 Pacific is holding fewer trains per day for crew only
21 over the last 18 months than at any time since 2019.
22 On the other hand, you can see that the same is not
23 true for BNSF, including a spike in train sale for
24 crew in the middle of 2024, which coincided with BNSF
25 implementing scheduled rest. I would offer that this

1 data suggests that UP is more than adequately staffed
2 from a TE&Y perspective, relative to the workloads of
3 trains that we currently have on the railroad that
4 need to be moved.

5 WITNESS SVATOS: All right. This slide
6 portrays the time dedicated to the carrier from SMART.
7 So this looks at what we see as the union cherry
8 picked a handful of pools for this exhibit. The
9 average time an employee spends when they take a trip
10 to the away-from-home terminal in 2023 is 17 hours.
11 Ten of those hours are federally required by the FRA
12 due to the hours-of-service law.

13 Next slide. I'd also like to refer
14 back to the carrier slide showing existing time off.
15 Train -- excuse me?

16 ARBITRATOR: Which is where? You know.

17 WITNESS SVATOS: On the slide.

18 ARBITRATOR: I understand it's on the
19 slide.

20 MR. MUNRO: This is from our opening
21 presentation.

22 ARBITRATOR: Okay.

23 WITNESS SVATOS: Sorry.

24 ARBITRATOR: Okay. Apologize. It is.
25 You're right. I stand corrected.

1 WITNESS SVATOS: I'd also like to refer
2 you back to the slide showing existing time off.
3 Train persons with 25 years of service have 113 days
4 off with our 5:1 proposal plus their agreement
5 provided days off. The average pool trainman
6 works 190 days based on an average of 15.8 starts per
7 month. With time off and days worked, that leaves 62
8 naturally occurring rest days with idle days per year.

9 Compared to an average worker of the
10 private industry who works between 244 and 260 working
11 days a year, depending on your time off. The fact is,
12 the time train persons spend working is far less than
13 the time other workers in private industries work.

14 WITNESS POWELL: Now, we'll turn to
15 SMART Slide Number 78 regarding their compensated time
16 off. So the union has proposed to allow employees a
17 float week of vacation, meaning that rather taking a
18 vacation in a weekly block or when it was scheduled,
19 they could float it any time of the year. This
20 proposal is, one, it's outside of the national
21 agreement. And we just also want to point out the
22 single-day vacations are more disruptive to operations
23 than vacations taken in weekly increments.

24 When it's weekly, another person can
25 fill that vacancy. When it's daily, those vacancies

1 are typically filled by the extra board. The union
2 has also proposed that all employees, regardless of
3 class of -- craft or class of service -- that means
4 there's a class of service as road assignments versus
5 yard assignments -- and seniority, will be provided 11
6 personal leave days. I just want to touch on why this
7 rule is extremely costly and increases in
8 availability.

9 Today, yard-service employees and a few
10 road-service employees that work 100 miles or less
11 receive holidays, so they receive holiday pay.
12 Additionally, not all employees are provided all 11
13 days off the bat. They earn those days based on their
14 seniority years. So the more seniority that you have,
15 the more personal leave days you will receive. So
16 again, they're wanting to expand these 11 days to not
17 only all classes of service, but all employees
18 regardless of their seniority.

19 So there's really two reasons that we
20 request you reject this proposal. One, it's outside
21 of the scope. Two, it would increase cost and
22 unavailability. Next slide. So the parties also
23 differ on the extent to which employees have the
24 ability to take unpaid time off. The union has
25 characterized Union Pacific's attendance policy as

1 unreasonable, pointing to some arbitration awards that
2 are supposed to be supported as evidence of this. And
3 the union also provides several anecdotes. The
4 carrier looked at empirical data, and arbitration
5 results for attendance discipline cases from
6 January 1st of 2022 to present shows that the carrier
7 has had 74% win rate on those attendance cases in
8 arbitration.

9 Next, regarding bereavement leave, the
10 union has proposed to substantially expand existing
11 bereavement leave. And the carrier is opposed to this
12 change primarily for two reasons. One, again, that's
13 outside the scope of this arbitration, and, two, it
14 would add additional cost as they are requesting to,
15 one, change how it's paid. Now it's being changed
16 to 30 days, paid 3 days -- within 30 days. And also,
17 they're increasing the number of individuals that
18 would qualify for the payment.

19 And finally, there's a number of slides
20 here, and I'm going to just kind of address -- there's
21 a lot of information here. But this is basically
22 where SMART is comparing the BNSF and the NS and their
23 deals that they were voluntarily agreed upon to the
24 Union Pacific. So, one, the BNSF is not a proper
25 comparator unlike what they said yesterday. While we

1 are the two largest western carriers, we have similar
2 network footprints and railroading is railroading, but
3 it doesn't mean that we are the same. The employee
4 bases are different and the work rules are different.
5 That's why the national agreement recognized a need
6 for local discussions and to address carrier specific
7 issues.

8 Union Pacific's experience with
9 mandatory rest days has not been the same as the BNSF
10 experience. Mr. Davis testified that the mandatory
11 rest days resulted in lower availability on the BNSF,
12 but the BNSF tells us that its more senior employees
13 were using time off in conjunction with those off
14 days, significantly impacting availability. Our
15 agreement with the BLET, which represents TE&Y
16 employees and engine service, incorporates mandatory
17 off days.

18 Under that agreement, we have seen a 3
19 to 5% improvement in non-compensated layoffs even
20 among our most senior employees. When negotiating
21 that agreement, which was reached voluntarily and
22 ratified by the BLET, BLET asserted that voluntary
23 rest days would destabilize the workforce and provide
24 uncertainty for its members. SMART TD clearly does
25 not believe that. In fact, SMART TD has argued

1 strenuously that this board cannot oppose those
2 mandatory rest days.

3 Now, BLET and SMART TD both represent
4 TE&Y employees on our system. Both crafts work in
5 similar type jobs and similar environments. But the
6 unions that represent them have very different views
7 on what work-rest approach would work best for their
8 members. Union Pacific's position is that another
9 carrier's agreement, such as the BNSF, is also not
10 appropriate for the workforce on Union Pacific. It's
11 no different.

12 MR. MUNRO: On this slide, Madam Chair,
13 just one comment. This was put in to suggest that the
14 BNSF experience has been one of the transition from
15 mandatory and voluntary and how that's had an impact
16 on guarantee. The only rebuttal point that we like to
17 offer here is that this has no relevance to what we're
18 discussing because Union Pacific is not proposing
19 mandatory rest. The prospects for a difference or a
20 transition or improvement in guarantee between
21 mandatory and voluntary is not relevant.

22 Okay. That brings us to the last
23 topic. Everybody's favorite issue, the IGN and the
24 Texas and Pacific. And I'm going to address that one
25 because it is primarily a question of contract

1 interpretation. Now, I did touch on this issue in my
2 opening statements. The Board may recall where I
3 explained that we differ with the union as to whether
4 changes in extra-board rules that we have proposed as
5 part of Article 7 are applicable to these two sections
6 of the Union Pacific property.

7 And let me just, sort of, highlight why
8 this is important. As you may recall, the carrier has
9 proposed about \$16 million in savings among the
10 various elements of Article 6 and 7 to counteract
11 the \$18 million in cost that it would incur under the
12 carrier's version of the proposed Article 5. About
13 half of that, about 8 million, in those savings is
14 attributable to the elimination of supplemental
15 boards.

16 And as the union indicated yesterday,
17 these are in effect, extra extra boards. So they're
18 extra boards that protect extra boards. So it's a big
19 deal. It is a significant element of the carrier's
20 proposal. Without it, the imbalance inequity becomes
21 even more extreme. We have two basic responses to the
22 union's argument that the supplemental boards are
23 sacrosanct, that they cannot be changed. And again,
24 as I mentioned, I did touch on this in my opening, but
25 I want to walk through it in a little more detail

1 because it is complicated.

2 So the union doesn't lay this out in
3 its materials in chronological order. And I think if
4 we the agreements in chronological order, it will be a
5 little more clear. So the first agreement that is of
6 relevance is this one. It's the 1988 agreement. And
7 by the way, there are, essentially, duplicative
8 agreements on these two properties. I'm not going to
9 cover both of them. The argument is the same with
10 respect to both.

11 So this is Union Exhibit 72. And as
12 you can see, in the 1988 agreement, there's an article
13 that's specific to crew consist. This is, as I
14 explained previously, the question of how many
15 employees work on the train and whether you require to
16 have just one, two, or more. There is a separate
17 article in that 1988 agreement, Article 2, it's on the
18 screen here, that provides for the guaranteed extra
19 board. If you go to the moratorium provision -- and
20 as the union correctly noted yesterday, the
21 moratoriums are provisions that dictate when parties
22 can serve formal notices under the Railway Labor Act
23 to change the provisions of an agreement.

24 The moratorium provision in the 1988
25 agreement is what we refer to as a standard

1 moratorium. And there's a long and complicated
2 history here, but suffice it to say that this language
3 that you see in paragraph 2, "party shall not serve or
4 progress prior to attrition of all protected employees
5 any notice or proposal for changing the specific
6 provisions of this agreement." And then there's a
7 list.

8 Okay. So what this meant, and
9 arbitrator LaRocco agreed with us on this point, this
10 moratorium only prohibits changes to those specific
11 items, not everything in the agreement. So if this
12 was the end of the story, we wouldn't even be debating
13 this. However, in 1993, there is a new crew-consist
14 agreement that modifies the older one. And just -- I
15 should have said this at the outset, but just as a
16 point of clarification, under the Railway Labor Act,
17 agreements don't expire. They remain in place except
18 to the extent modified by subsequent agreements.

19 So you have this sort of sedimentary
20 accumulation of agreements over time. So this is one
21 reason why I would never want to work in a railroad's
22 labor relations department. But the -- So you have to
23 understand how all these agreements sort of layer up.
24 But this 1993 agreement was, effectively, an
25 arbitrated agreement. And it provides for a new

1 provision for -- on crew size. Article 1 of that
2 agreement.

3 Now, this arbitrated agreement in 1993
4 had a different moratorium provision. And this is
5 essentially what the union is relying on. It says
6 there in Article 5.2A, "the parties to this agreement
7 shall not serve or progress" -- and that's a typo --
8 "any notice or proposal for changing the specific
9 provisions of this agreement." Period. So you
10 contrast that back to the standard moratorium. It
11 doesn't have that list.

12 See, it doesn't say governing pure
13 attrition, protected employees, car limits, blah,
14 blah, blah. It just says you can't change the
15 specific provisions of this agreement. And again,
16 this agreement had this new crew size rule, but it
17 doesn't have anything about supplemental boards. It
18 doesn't include any kind of provision regarding the
19 extra boards.

20 So you have a rule that is a more
21 powerful, more indefinite moratorium that prohibits
22 changing the specific provisions of this agreement.
23 The 1993 agreement. Okay. Time goes on. We get to
24 the '96 agreement. This is the third in this sort of
25 layered stack. And again, as the union pointed out

1 yesterday, there's a new rule here. Again, they're
2 modifying the rules for crew size. And then the
3 moratorium provision in '96 says, "it's recognized
4 that the moratorium provisions currently in place
5 pertaining to crew-consist provisions will remain in
6 full force in effect."

7 So essentially what it's doing is it's
8 preserving that '93 arbitrated agreement's moratorium
9 that says, you can't change anything in the '93
10 agreement, including the provisions for crew size. It
11 doesn't say anything about the earlier agreement
12 provisions on different subjects. So properly
13 interpreted, the way these three agreements fit
14 together is, Union Pacific cannot serve Section 6
15 notice or make any other proposal to change the crew
16 size rules, which is a big deal.

17 It locks in those rules, apparently, in
18 perpetuity, according to the text of the agreement.
19 But it doesn't restrict anyone from proposing changes
20 to unrelated provisions, including the extra-board
21 rules. All right. So that brings us to the LaRocco
22 Award. Now, as Mr. Branon testified yesterday, the
23 LaRocco Award was about this long-standing, very
24 emotional battle over changes in crew size rules.

25 And one of the reasons why it's so

1 important is that the carriers believe -- this is,
2 again, probably more information than the board needs.
3 But the carriers believe they could operate with just
4 one person in the cab. The unions vehemently
5 disagree. And so there's -- when the carriers
6 proposed in the last round to adjust crew size, it led
7 to this arbitration. The union was saying, look, you
8 cannot propose that.

9 And they were pointing back to this
10 language, this standard moratorium language, on most
11 of the properties that were at issue. But the TMP and
12 the IGN had the benefit of these modified moratorium
13 provisions. They were all being addressed at the same
14 time. And so what arbitrator LaRocco was asked, do
15 any of these moratoriums bar the service or
16 progression of notices proposing to alter the consist
17 of crews? That's what this was about.

18 It was about the restrictions on
19 changing those crew size rules. And what he said was,
20 the carriers win under the standard moratoriums. So
21 the vast majority of the properties in that case, the
22 carriers prevailed, including on most of Union
23 Pacific. But the TMP and the IGN were different. And
24 the union had provided you with a quote from the
25 LaRocco Award, but it didn't cover the whole section

1 of that award.

2 Because what Mr. LaRocco was saying
3 was, look, the TMP clause doesn't include that
4 additional list that we just referred to, pure
5 attrition, train limits, etc., etc. It just refers to
6 the specific provisions of this agreement. But he's
7 talking about, again, the '93 agreement, not the 1988
8 agreement. There's nothing in the 1993 agreement that
9 has to be changed in order to implement the carrier's
10 proposal to eliminate supplemental boards as part of
11 the implementation of Article 7. To get to the result
12 that the union is arguing for, you have to conflate
13 the moratorium provisions in different agreements.
14 And that is not proper contract interpretation.

15 Now, as I said at the outset, there are
16 two reasons why they're wrong. This is one. And the
17 second goes back to mutual consent. If you recall,
18 the moratorium, even the special moratorium, the
19 stronger moratorium in the '93 agreement says you can
20 make changes by mutual consent. So even if the '93
21 agreement moratorium was applicable here, we could
22 still change it so long as the union agreed. And
23 that's what the 2022 agreement is. It is an agreement
24 to change extra-board rules.

25 And the union's argument is that we

1 didn't agree, but they did. It's there in the text of
2 the agreement. It was imposed by Congress, but that
3 is their language that was reached in a tentative
4 agreement between SMART TD and the carriers, including
5 Union Pacific. So that is mutual consent. If you
6 want to add later on this additional limitation that
7 they say, the moratorium provisions won't be altered
8 in any form, including but not limited to national
9 negotiations. This is the additional twist that they
10 throw in.

11 But again, it's about crew-consist
12 provisions, not extra-board provisions. It doesn't
13 say anything about limiting the right to change
14 extra-board provisions through national negotiations.
15 So we have a binding agreement reached in 2022 between
16 these parties that provides for the right to change
17 these provisions. And it also includes a side letter
18 that specifically provided the union with an
19 opportunity to carve out anything that they didn't
20 want to apply and they didn't do it.

21 There isn't anything inside Letter 5 to
22 suggest that these two properties couldn't be the
23 subject of an Article 7 notice. Now, the union is
24 simply saying, in essence, well, we didn't have to
25 because we have this old agreement, but that's not how

1 contracts work. Contract law provides that a new
2 agreements modify old agreements. The presumption is
3 the new agreements control, absent some specific
4 exemption. You have to carve out what you want to
5 preserve.

6 And as I said, the parties have lots of
7 experience with this because agreements under the
8 Railway Labor Act layer on top of one another. So the
9 new replaces the old. And if you want to preserve
10 something on the same subject, you carve it out. The
11 parties know full well how to do that; they didn't do
12 it here.

13 That brings us to the end of the
14 carrier's rebuttal presentation. Unless the board has
15 any questions, we're prepared to conclude.

16 ARBITRATOR: I have no questions.
17 Thank you.

18 Is the organization ready to go forward
19 at this point? Is there a need for a break? Oh.
20 Okay. So we are gonna switch.

21 MR. MCKINLEY: We don't have --

22 MR. EDINGTON: If you don't mind, I'll
23 drag a cord over. Otherwise, that's it.

24 MR. MCKINLEY: There is one point in
25 order. We do have a witness. President Ferguson

1 would be recalled as a witness for rebuttal testimony
2 today. He is in the city, but he's at another hotel
3 engaged in national handling negotiations, which, you
4 know, is kind of funny because we're back at national
5 handling again already. He would like to be here in
6 person. I'm trying to coordinate if he can be here in
7 person within, like, the hour. But would it be
8 permissible in the event that he can't, we can have
9 him call in like Mr. Branon did yesterday?

10 ARBITRATOR: Absolutely. Absolutely.

11 MR. MCKINLEY: But I -- I mean, I think
12 we can take a short break, and then we can get
13 started.

14 ARBITRATOR: Okay. Let's do that.
15 Take a 10-minute break.

16 (Whereupon, a break was taken
17 at 11:07 a.m.)

18 (Back on the record at 11:22 a.m.)

19 ARBITRATOR: Mr. Edington, whenever
20 you're ready for the organization's rebuttal.

21 MR. MCKINLEY: Madam Chair, to follow
22 up on our discussion before the break, I spoke with
23 President Ferguson. They've wrapped up their session
24 for the day. He's going to be heading over. Our
25 thought was that we would begin our rebuttal -- and I

1 spoke with Mr. Munro about this -- begin our rebuttal,
2 then we'll have lunch, and then he can be here by the
3 time -- when we pick back up and we finish our
4 rebuttal then --

5 ARBITRATOR: Absolutely, we can be
6 flexible.

7 MR. MCKINLEY: Thank you.

8 ARBITRATOR: Sure.

9 MR. EDINGTON: Okay. I'll start by, if
10 it's okay with the Chair to acknowledge on record I'm
11 still under oath.

12 ARBITRATOR: That would be fine. Are
13 you speaking on behalf of everyone who is going to be
14 speaking?

15 MR. EDINGTON: Yes. Absolutely.

16 ARBITRATOR: Okay. Thanks for --

17 MR. EDINGTON: So first off, do you
18 want to do the same with Mr. Piland? You already
19 acknowledged --

20 MR. MCKINLEY: He will be our witness.

21 MR. EDINGTON: He will be our witness
22 I'm recalling for this particular --

23 ARBITRATOR: Yes. Okay. So
24 everyone -- you all acknowledge that you continue to
25 be under oath.

1 WITNESS PILAND: Yes, ma'am.

2 ARBITRATOR: Everyone who's going to be
3 speaking.

4 MR. EDINGTON: Okay.

5 ARBITRATOR: Okay. Fine.

6 EXAMINATION

7 BY MR. EDINGTON:

8 Q. Okay. I'd like to address what carrier
9 witness Branon testified to yesterday when he said,
10 "the organization had ample opportunity to --
11 opportunity to include the TMP and IGN properties in
12 Side Letter Number 5 of the tentative agreement but
13 failed to do so." Now, it's our position there was no
14 need to do so as the LaRocco Award was adopted prior
15 to this tentative agreement and it already settled the
16 dispute. Thus there's no reason to duplicate this in
17 Side Letter 5 because the award already existed.

18 Mr. Piland, can you elaborate on
19 Mr. Branon's statement and their arguments before that
20 LaRocco Award and the timing of that that led up to
21 the tentative agreement?

22 A. Certainly. In the carrier submission
23 to PLB7960 -- wait. Well, let me back up real quick.

24 Want to -- Mr. Munro, I would agree
25 with some of what he said earlier, but I would like to

1 point out that there are some things that are not
2 accurate in his representation of what is protected
3 under our crew-consist moratorium. But when I back up
4 and talk about the carve out, as we said, the dispute
5 was settled once and for all, which was the carrier's
6 request, when we went to arbitration over the
7 crew-consist moratorium and PLB7960 and the other
8 property and the other boards.

9 There were 19 properties in total, and,
10 as he said, the other 17 properties had a standard
11 moratorium and -- that identified the issues that
12 could be talked about. And Mr. Munro, in that
13 arbitration, said words have meaning, and he's exactly
14 right. The contractual language. He went on in his
15 -- in the written submission that Kerry presented to
16 the board, they argued that if the parties had
17 intended to protect every provision of a crew-consist
18 agreement, they would have explicitly written broader
19 language to accomplish that goal.

20 They even cite agreements from other
21 properties to demonstrate the point suggesting that a
22 lack of specific language tied to crew size or similar
23 topics in the moratoriums on certain properties
24 supports their interpretation. When the carrier
25 neglects to -- what the carrier neglects to

1 acknowledge, however, is that this argument falls
2 apart when we examine the explicit and unambiguous
3 language of the IGN and TMP moratoriums. Unlike the
4 moratoriums on other properties, these agreements were
5 written with a extraordinarily comprehensive
6 protections.

7 The TMP and IGN moratoriums do not
8 limit their scope to specific provisions, nor do they
9 leave room for reinterpretation. Instead, they
10 explicitly state that no changes can be made to the
11 agreements in any forum, including but not limited to
12 national negotiations or boards established pertaining
13 thereto. PEB250 is a board established in regard to
14 national negotiations.

15 That is the plain language of the
16 moratorium, and the mutual consent which Mr. LaRocco
17 indicated. And Mr. Munro stated on the record in his
18 rebuttal a second ago, and acknowledged the fact that,
19 on our properties, unless by mutual consent, they
20 cannot change the size of crews. What Mr. LaRocco was
21 saying is that anything inside of our crew-consist
22 agreement, that same perpetuity of the moratorium and
23 that same mutual consent required to alter any
24 provision of crew consist, not just crew size.

25 Q. Mr. Piland, is that what you're

1 referencing is LaRocco Award right there?

2 A. That's correct.

3 Q. Where it says the "entire agreement."

4 So he rules not just on the moratoria of crew size of
5 specific items. He goes beyond that. Would that be
6 correct?

7 A. That is correct.

8 Q. And he says every provision contained
9 therein is protected under this. It can only be
10 changed through mutual consent.

11 A. That's correct. And the carrier said
12 that earlier when he was referencing the 1988 crew
13 consist. He said, hey, there were some items listed.
14 In our 1980 Crew-Consist Agreement. The '88
15 Crew-Consist Agreement, the '93 Crew-Consist
16 Agreement, and the '96 guaranteed extra boards are all
17 elements of those agreements.

18 Q. And Mr. Piland, so the 2022 tentative
19 agreement, that failed ratification?

20 A. Correct.

21 Q. Okay. So it was not through mutual
22 consent. It was imposed by Congress and Public Law
23 Number 117-216; is that correct?

24 A. Correct.

25 Q. What does it mean when it fails

1 ratification?

2 A. It means that we rejected it. We
3 didn't agree to it.

4 Q. So it means that the employees were
5 voted it down; they rejected the agreement?

6 A. That's correct.

7 Q. They didn't Mutually agreed to it?

8 A. That's correct. Mutual consent for our
9 moratorium would require the consent of the general
10 chairman on that property and the highest designated
11 officer of the carrier for that property. That's what
12 local handling would mean. And that's the only
13 consent that can be given to modify our crew-consist
14 agreements under the existing moratorium.

15 Q. And how does that general chairperson
16 get the authority to agree that through mutual
17 consent. Is it through the ratification process?

18 Do they have -- the employees have --
19 in other words, does the employees have to ratify --

20 A. That's correct.

21 Q. -- the agreement to give you permission
22 to sign it?

23 A. That's correct.

24 Q. Okay. Thank you.

25 A. So I'll continue on.

1 This broader and unequivocal language
2 is the reason why Arbitrator LaRocco in his award for
3 PLB7960 ruled that the TMP and IGN moratoriums last
4 into perpetuity and cannot be altered without mutual
5 consent. Unlike the example cited by the carrier, the
6 parties involved in the TMP and IGN agreements
7 deliberately included these sweeping protections to
8 ensure that all provisions of the agreements,
9 including those related to extra boards and
10 supplemental extra boards, were safeguarded.

11 We're one of the few properties that
12 have supplemental boards because we gave up the
13 brakemen in 1996 to the carrier and -- and so they
14 were able to run conductor only in all classes of
15 service when the other properties didn't do that.
16 That was part of why we were able to achieve the
17 language we achieved in the moratorium.

18 Q. So, Mr. Piland, the 1996 Exhibit 73,
19 page 1, because the extra boards are what we're
20 discussing here today?

21 A. That's correct.

22 Q. It's what Mr. Branon was referring to
23 in his testimony, that they weren't carved out. Now,
24 you established they are protected under the
25 moratorium. LaRocco ruled on that. That can't be

1 changed in mutual consent.

2 A. Correct.

3 Q. Mutual consent was not given because
4 the agreement was not ratified as imposed by Congress.
5 Now, the extra boards, supplemental boards are -- they
6 are included in the crew-consist agreements?

7 A. Yes. Mr. Munro indicated or told Madam
8 Chair that the extra boards were not a provision of
9 crew consist, but our 1996 guaranteed combination
10 extra board and supplemental extra boards memorandum
11 agreement clearly, clearly indicates and establishes
12 the fact that they are provisions of our crew consist.
13 It says, "in connection with modifications to existing
14 crew-consist provisions, the parties have agreed to
15 amend certain provisions pertaining to the operation
16 and administration of guaranteed extra boards and to
17 establish guaranteed combination extra boards and
18 supplemental boards. Accordingly, it is agreed the
19 following conditions so apply."

20 And then it gets into the great detail
21 about -- how the regulation of our extra boards, the
22 compensation, the establishment. Same thing with
23 supplemental extra boards.

24 Q. So then those are included in the 1996,
25 and here is this the moratorium language LaRocco was

1 reviewing and referencing in his arbitration?

2 A. Correct.

3 Q. So it includes all those provisions?

4 A. That's correct.

5 So the extra boards -- one last point

6 that this was not an oversight or a failure to
7 anticipate future issues. It was a conscious and
8 negotiated decision to provide lasting stability and
9 protect the quid pro quo that was established when
10 these agreements were first negotiated. And the best
11 analogy I can offer is that it's one of a fortified
12 vault. While other properties might have installed
13 locks on certain doors of their agreements, the IGN
14 and TMP and moratoriums represent a fully reinforced
15 vault that protects the entirety of the agreement,
16 ensuring no changes can occur without explicit mutual
17 consent.

18 This was not accidental. It was
19 designed to ensure the carrier could operate
20 conductor-only trains while the organization preserves
21 perpetual protection of all the provisions in the
22 agreement. Any attempt by the carrier to reinterpret
23 or sidestep these protections undermines the very
24 foundation of the agreement and the significant cost
25 savings benefits the carriers enjoy over decades as a

1 result of being able to run trains with only a
2 conductor on them.

3 MR. EDINGTON: Okay. Thank you,
4 Mr. Piland.

5 And I just -- there's two brief things
6 in rebuttal. The rest will be following in the
7 surrebuttal. I have several things I want to discuss
8 there, but I do want to touch on two things very
9 quickly.

10 Carrier witness -- I apologize if I get
11 the name right. Wrong. Yankee. Janke. I'm sorry.
12 He testified to the board promising in his testimony
13 on Tuesday that there will be no employees furloughed
14 under carrier's proposal. Now, while we disagree
15 about that and I will address that further in
16 surrebuttal about remarks that are made in rebuttal, I
17 do see that the organization's proposed remedy that's
18 contained in our Appendix B, Side Letter 3, pages 108
19 through 110. It's not up on the board; I'm just
20 referencing it.

21 We believe that should be adopted to
22 hold them to that promise. That if those gains are
23 being hidden, that the carrier's promise is fulfilled.
24 And we feel that that would be appropriate. I also
25 want to address the comments that were made on Tuesday

1 about the high use of paid sick days during the Kansas
2 City Chiefs game. And I want to show the board. So
3 these are the Kansas and the Missouri DOT road
4 closures at that same time, that same location when we
5 had the blizzard I referenced yesterday showing that
6 all the roads are closed.

7 And as I discussed yesterday, employees
8 could not get to work and were told to use paid sick
9 days. They want to talk about an increase in paid
10 sick days. They were instructed to use those in lieu
11 of laying off weather. So it's not an accurate
12 representation of abuse of paid sick days. It's
13 because they could not get to work. The roads were
14 closed. Blizzard conditions. The state wasn't even
15 out clearing the roads. I can speak to that first
16 hand because I live there.

17 That is all for my rebuttal. I have
18 more on the surrebuttal.

19 MR. MCKINLEY: Maybe it's just habit,
20 but I prefer to be at the lectern. I have some items
21 to address here. And then as we discussed, it might
22 be an appropriate time to take a break and then
23 Mr. Ferguson will come back.

24 ARBITRATOR: Can everyone hear?

25 MR. MCKINLEY: I will speak up more.

1 My apologies.

2 ARBITRATOR: Okay. No problem.

3 MR. MCKINLEY: So going back to
4 Tuesday, and as one point of note, I'm trying my best
5 to treat this as specifically just a rebuttal to what
6 was said on Tuesday, but obviously some things were
7 brought up in their rebuttal today. I don't want to
8 blend topics, so I'm trying to limit myself to
9 specifically what was discussed on Tuesday. There'll
10 be more points to bring up in the surrebuttal later.

11 But I want to address what council for
12 carrier Mr. Munro said about quid pro quos and,
13 specifically, the board's jurisdiction. This was
14 mentioned in their written materials and Mr. Munro
15 discussed it on Tuesday. As Mr. Munro said before,
16 there is a lot that we do not agree on in this case.
17 One thing we do agree on in spirit is that the
18 articles require a fair exchange of value. The quid
19 pro quo, Articles 5, 6, and 7.

20 The PEB250 stated that these articles
21 were interrelated, and you can see how they're related
22 as I think we've gone through two days of
23 presentations. You're talking about predictable time
24 off for employees, but, also at the same time,
25 operational flexibility and more availability for the

1 carrier. These ideas are related. There is also
2 tension between the two of them, but you can see where
3 the PEB250 was coming from when they stated that.

4 Now, while we agree, generally, that
5 there is a -- supposed to be a fair exchange of value
6 of quid pro quo, we disagree on exactly how that
7 looks. And that is the fundamental dispute that is
8 before this board. The carrier has repeatedly
9 asserted that the scope of the issue in the
10 proposal -- the issues contained in the proposals are
11 very narrowly defined. And the carrier has intimated
12 many times that, particularly with Article 6 and 7,
13 that it has sole control over the contents of those
14 proposals, that the carrier dictates the conversation.
15 And all that's left then is to implement.

16 So -- but if you look at Articles 5
17 through 7 -- you know, we're going to look at the
18 language here, and we're also going to look at what
19 the TA says specifically about this arbitration panel
20 right here and the authority that this board has. So
21 Article 5, this is work-rest cycles. So it says
22 notice -- I mean, it gave the union the right to serve
23 notice on the carrier regarding -- we voluntarily
24 assigned days off.

25 It says, "the notice shall specify the

1 rules the union proposes to establish in the
2 conditions, if any, which it proposes shall govern the
3 establishment of such rules. The carrier may respond
4 with its own notice specifying the rules that the
5 carrier proposes to establish in the conditions, if
6 any, which it proposes shall govern the establishment
7 of such rules." Those are twin rights. The union can
8 serve a notice that this is our proposal. The carrier
9 may respond that this is our proposal.

10 Next slide. 6 and 7. 6 and 7 are
11 quite similar. The opening phrase is a little bit
12 different due to the nature of the provisions therein.
13 But the carrier is permitted to identify carrier
14 specific -- they're allowed to serve a notice and then
15 identifies, "carrier-specific implementation matters
16 that it believes must be addressed in connection with
17 such implementation." Again, "the organization may
18 respond with its own list of carrier-specific
19 implementation issues that it believes must likewise
20 be addressed."

21 Next slide. And I highlight that that
22 is the same language in our Article 7 also. And the
23 point there is that it's the same process, but it's
24 flipped on its head. The carrier can serve notice,
25 the union may -- the carrier can identify what it

1 thinks is a proper proposal and the issues that are
2 needed to implement that. The union may respond in
3 kind. That's just bargaining. Okay? That is all
4 that is. That's collective bargaining. And that was
5 the process that was unsuccessful here that led us to
6 here. That is what the articles allow.

7 Now, can I get to the next slide?

8 So we turn to the TA now. Those
9 Articles 5, 6, and 7 are also in the TA. But the
10 tentative agreement, you know, includes this language
11 on the arbitration backstop, which is why we're here.
12 It asserts the jurisdiction -- it establishes the
13 jurisdiction of this board. The, you know, it goes
14 through the 180 days of the notice and party may
15 submit the matter to final binding, you know, party --
16 obviously, that's how we're here. "The arbitration
17 board shall have jurisdiction to determine whether and
18 how the rules referenced in this article will be
19 implemented."

20 Can I get the next slide, please.

21 This is the arbitration backstop for
22 Article 6. It is the same language. And this is for
23 Article 7. It is the same language. So when we're
24 looking at this arbitration backstop, the questions
25 before this board is whether to implement the

1 proposals regarding Article 5, Article 6, Article 7,
2 and if so, how. How that is to be done. So the
3 carrier has suggested that it controls the scope of
4 the discussion that is had over our Article 6 and 7
5 and that, you know, they cite other arbitration where
6 it says that it is entitled to the implementation of a
7 proposal there.

8 The arbitration backstop nullifies
9 that. You can see right there. There it is
10 contemplated between the parties that there is a
11 scenario where an article might not be implemented.
12 It says right there whether it will or not. Now, that
13 issue specifically is not an issue here because
14 neither party has an argument that -- you know, the
15 other party's proposal with respect to an article
16 shouldn't be implemented.

17 So the question before this board is
18 how then these are to be implemented. That is the
19 jurisdictional question. And now, when you're looking
20 at that question of how, you have to go back and look
21 at what PEB250 said in the recommendations
22 that this -- these Articles 5, 6, and 7 are
23 interrelated. They constitute common issues, they
24 raise common issues, they are interrelated.

25 And the quid pro quo exists not in a

1 simple exchange of, well, the union gets time off, so
2 the carrier gets Articles 6 and 7. You have to look
3 at the agreements -- the proposed agreements as a
4 whole, and determine what creates the most balanced
5 quid pro quo. That's the task here. And I know that
6 the carrier would like to narrowly define that and box
7 this board in, that it can't make a decision, and they
8 can only make a certain decision based on a
9 predetermined list of issues that they propose. But
10 that is simply not the case.

11 And with that, that's related to their
12 Tuesday testimony. There will be more on a
13 surrebuttal, but with that, I think we'll -- if we
14 can, take a break for lunch. And then come back for
15 Mr. Ferguson.

16 ARBITRATOR: Okay. It appears that the
17 parties are on their own for lunch today. So we're
18 going to allocate one hour for lunch. See you in one
19 hour. Please enjoy.

20 (Whereupon, a break was taken
21 at 11:44 a.m.)

22 (Back on the record at 12:59 p.m.)

23 ARBITRATOR: Good afternoon. All set
24 for the organization's rebuttal?

25 MR. MCKINLEY: Yeah, Madam Chair.

1 ARBITRATOR: Good afternoon. You
2 continue to remain under oath.

3 WITNESS FERGUSON: Okay. I remain
4 under oath. Thank you.

5 ARBITRATOR: Remain under oath. Yes.

6 EXAMINATION

7 BY MR. MCKINLEY:

8 Q. And for the record, can you just state
9 your name.

10 A. Jeremy Ferguson.

11 Q. So we already talked about the
12 testimony offered yesterday by Brendan Branon. And do
13 you know who Brendan Branon is?

14 A. Yes, absolutely.

15 Q. How do you know him?

16 A. He was the chief negotiator for the
17 NCCC. My counterpart in the last round of national
18 negotiations.

19 Q. And are you aware that Mr. Branon
20 appeared as a witness yesterday?

21 A. Yes.

22 Q. Are you aware that Mr. Branon testified
23 about conversations with you and the BLET President
24 Dennis Pierce with respect to wage issues under the
25 tentative agreement?

1 A. Yes. I have been informed of that.

2 Q. Okay. I want to focus on one
3 particular aspect of his testimony where he stated
4 that you and President Pierce of the BLET, your
5 position with respect to compensation and wages under
6 the TA. What is your understanding of what he said
7 about that conversation with you and President Pierce
8 and Articles 5 through 7?

9 A. Well, I understand that he said or
10 attempted to imply that Dennis Pierce and I stated
11 that there would be, you know, no compensation
12 discussions in relation to Articles 5 through 7.

13 Q. So is that true?

14 A. Absolutely not. I think he was taking
15 the numerous statements that both Dennis and I made
16 out of context -- seriously out of context because I
17 distinctly remember, not only making that statement
18 that we were fine with compensation meeting Article 2,
19 the general wage increases, we were fine with those
20 GWIs that were contained in the PEB recommendation. I
21 made that statement to the Speaker of the House, Nancy
22 Pelosi, to Marty Walsh, Secretary of Labor, Chuck
23 Schumer for the Senate, and I even stated that to the
24 President of the United States that evening at 9:00
25 when he called to talk with us on the situation.

1 And what we were meaning by that is we
2 were fine with the recommendation of the PEB with
3 general wage increases, with the health care, but the
4 pertinent issues that we were standing our ground on
5 were attendance related issues and the fact that we
6 didn't have paid sick days. And in addition to that,
7 the excessive discipline and firing of employees who
8 needed to be off sick or needed medical attention.
9 And the Secretary of Labor even requested and required
10 us to show proof of all that discipline and everything
11 that had gone on.

12 So that is what he is taking -- I
13 presume. I'm not going to speak on his behalf, but
14 he's taking it out of context because we wanted all
15 the 5, 6 and 7 issues to be handled on the property by
16 the proper general committees of adjustment.

17 Q. Right. So the wage increase was not
18 tied to the resolution of Articles 5 through 7?

19 A. Absolutely not.

20 Q. So when you say that the union was okay
21 with the 22% wage increase, that doesn't foreclose
22 discussions on compensation on Articles 5 through 7,
23 in your opinion?

24 A. Correct.

25 Q. And then when we talk about the 22%

1 wage increase, that came in national bargaining,
2 right?

3 A. Yes. As a result of PEB.

4 Q. Right. And so articles -- the handling
5 of Articles 5 through 7, is that part of national
6 bargaining?

7 A. Could you clarify that because --

8 Q. Well, you had -- you had referenced
9 earlier that it should be handled by the general
10 committees of adjustment, which would be local
11 bargaining, right?

12 A. That would be local, yes. And when the
13 PEB recommendation came out, that 5, 6 and 7 was
14 imposed upon authorities for the March PD and BLET,
15 when we started transitioning the recommendation into
16 a -- attempted to put it into a tentative agreement,
17 that it would be handled on the property. And it had
18 nothing to do with the general wage increases because
19 all -- like I said yesterday, all the other unions got
20 to -- got the 22% also. So it was not tied
21 to 5, 6, and 7 at all. Is that clear?

22 Q. I think that's clear. And I think that
23 addresses the issue that you're here for. And so I
24 think that's -- we can let Mr. -- President Ferguson
25 off the hook here.

1 ARBITRATOR: Thank you.

2 WITNESS FERGUSON: Thank you.

3 ARBITRATOR: Mr. Edington, is there

4 anything else?

5 MR. EDINGTON: No. We are done with

6 our rebuttal.

7 ARBITRATOR: Thank you very much.

8 MR. EDINGTON: Thank you.

9 ARBITRATOR: Mr. Munro.

10 MR. MUNRO: Madam Chair, could I have

11 the two minutes to consult with my team about the need

12 for a surrebuttal?

13 ARBITRATOR: About what?

14 MR. MUNRO: About the need for any

15 surrebuttal, which I understand the --

16 ARBITRATOR: Sure. We'll take five

17 minutes break.

18 MR. MUNRO: Thank you.

19 (Whereupon, a break was taken

20 at 1:06 p.m.)

21 (Back on the record at 1:11 p.m.)

22 ARBITRATOR: Okay. We're back on the

23 record.

24 How would you like to proceed,

25 Mr. Munro?

1 MR. MUNRO: Madam Chair, I have a very
2 brief surrebuttal to the union's rebuttal
3 presentation.

4 ARBITRATOR: Proceed.

5 MR. MUNRO: Thank you. The only
6 subject I'd like to very briefly address is the IGN
7 and Texas and Pacific issue.

8 ARBITRATOR: Please keep your voice up,
9 Mr. Munro.

10 MR. MUNRO: Yes. Yes, ma'am.

11 Let's see if I can angle this a little
12 bit better.

13 As I indicated, I'd like to briefly
14 address the IGN and Texas and Pacific issue that
15 Mr. Edington spoke about earlier today. As the board
16 may recall, my argument is the extra-board rules that
17 are at issue here are contained in the 1988 agreement,
18 and so the 1993 special moratorium applies to its own
19 agreement, not the extra-board rules. And the 1996
20 agreement, likewise, applies only to, "moratorium
21 provisions pertaining to crew consist."

22 Now, the union said, wait a minute.
23 Wait a minute. There are supplemental extra-board
24 rules in another agreement -- in another 1996
25 agreement. And they put up the quote on the screen

1 from Exhibit 73. Here's the problem. They are still
2 conflating different agreements. Exhibit 73 is a
3 separate agreement. It's not covered by the 1993
4 special moratorium -- that's in Exhibit 67 -- because
5 it is not a "specific provision" of that 1993
6 agreement. It's not covered by the 1996 language
7 either in Exhibit 68. Again, separate agreement.

8 Bless you.

9 And finally, I'll note that they're
10 misreading that 1996 language, where they rely on the
11 no national board modification language. The language
12 that appears in the '96 version. It says that
13 existing moratorium language remains in place. That's
14 it. So if a subject is inside the moratorium, it
15 stays. And if it's outside, well, it's not covered.
16 The point of the '96 language was to prevent the
17 elimination of the special moratoriums on crew size at
18 the national level.

19 Why was that? Because in 1991,
20 Presidential Emergency Board 219 took the existing
21 moratorium provisions in those local agreements and
22 basically wiped them out. It said, we are going to
23 disregard those moratoriums and proceed
24 notwithstanding that language. And the union did not
25 want that to happen again. So the point of the '96

1 language was to prevent the -- a national board from
2 changing the moratorium provisions, not the underlying
3 substantive language, but the moratorium. It has
4 nothing to do with determining the bargainability of
5 extra-board rules.

6 Thank you.

7 ARBITRATOR: Nothing else in
8 surrebuttal, Mr. Munro?

9 MR. MUNRO: No, ma'am.

10 ARBITRATOR: Okay.

11 Mr. Edington.

12 MR. EDINGTON: I'm ready to go if
13 that's all right. I will also try to be brief.

14 I'm just going to touch on some of the
15 points that they presented very briefly like I said.
16 Probably take about 15 minutes total, tops.

17 The maintaining earnings while working
18 less. The argument that the carrier discussed
19 earlier, you know -- the regulation factors that the
20 organization proposed actually increase starts for
21 pool employees while providing predictable rest days.
22 So it isn't working less. There's many pools that
23 will work more under this model, giving them more
24 productivity. It also gives them predictability and
25 control when they work. That's not true. When they

1 say they want to control when they work, they want to
2 be able to have access to their compensated time off
3 and predictable days, rest days, like we presented in
4 work-rest models that they could plan family events
5 with.

6 Now, when they discussed the new hires,
7 we saw how the new hires -- they had a slide on that
8 that presented. We tell them about the irregular
9 schedule that they have now when they're hired. Our
10 staffing data shows that carrier can't retain these
11 employees, as does testimony from senior leadership
12 before this Surface Transportation Board.

13 I want to point out in Exhibit 13,
14 page 817, Executive President Whitehead stated, "the
15 carrier was struggling to hire at locations with tight
16 labor markets and potential employees were seeking
17 more flexibility, better hours, set schedules, and
18 Union Pacific was working to create jobs that are more
19 appealing and meet the needs of the future workforce
20 as well as the workforce of today. And we will need
21 to work closely with our union partners to address
22 those needs."

23 So she not only recognized they have an
24 issue, she knew what it was and that we needed to work
25 with labor to fix it. The next one. This is an

1 important one, is -- that the carrier will not reduce
2 manpower under their proposal. Now, I didn't see how
3 they illustrated this, how they will retain those
4 people, specifically, how extra boards will need
5 additional personnel if the majority of the
6 extra-board work is moved into pool freight.

7 The chart that they put up had pool
8 vacancies, this is how much work the extra board
9 performs. Pool vacancies they said was 51%, hours of
10 service was 14%. You move 65% of the work from that
11 extra board, why would you pay the same amount of
12 people to do 35% of the work they previously did? In
13 fact, why would you add even more to it? I question
14 their data on that, and I believe that the board
15 should also look at that closely because it really
16 doesn't compute.

17 Now, the carrier also said that the
18 union's proposal would create rest days on pools that
19 would have to be filled with the extra board. Our
20 proposal does not do that. It's a self-supporting
21 system. The extra board is used if the pool is
22 completely exhausted. Now, we're not requiring those
23 under our agreement to be must-fill positions. So the
24 extra board is not staffed according to pool freight
25 size. It's just the irregular service that is left

1 over.

2 And if the extra board is not
3 available, you go to the next pool. Makes sense. You
4 keep a pool vacancy within the pool. Now, they say
5 that adds additional cost as well. Well, let's look
6 at the math that. The 65 miles, a half a day another
7 pool employee would get for covering that assignment
8 is way less than the guaranteed payments they'd have
9 to have if they staffed an extra board to cover that
10 work. So there's savings there as well.

11 I just want to make it clear. They say
12 that the public law -- they allude that those
13 questions and answers aren't right about the irregular
14 service and that hours-is-service work should be
15 included. We pointed those out in the Q&As. They are
16 specifically outlined and set aside. They are carved
17 out. When they say things need to be carved out,
18 those were. We made those points earlier.

19 Vacancy procedures. Carrier claims it
20 has a specific order. I just ask the board read their
21 proposal, please. You'll see that there is no
22 specific order. There is none in there. On the other
23 side, our proposal does have specific order to it.
24 Now, that provision, along with some others, are
25 intentionally left very vague, and it's done so, so

1 they can unilaterally go in and take whatever position
2 they need at the time to fit their need of service and
3 make modifications.

4 You want an example of that. You look
5 at the recent agreement they did with BLET over the
6 work-rest agreement. They made a unilateral change to
7 that agreement without negotiating with the BLE and it
8 resulted in the BLET filing suit in federal courts.
9 Coincidentally, it was on the same day -- same week
10 that they failed to show for negotiations in Dallas.
11 Now, when they allude that vacancies, if there's no
12 one available, they can use management.

13 They can supplant our employees, our
14 members, with management personnel. That's not true.
15 We argued that at the 1984 crew consist. I ask that
16 the board just look at the Smart TD opening submission
17 Exhibits 63, 67, 68, 69, 72. They all say that those
18 things cannot be changed unless they have a specific
19 time -- many of them do -- of when you can serve
20 notice to change any provisions contained in that
21 agreement.

22 We have not received any notice to
23 change any provision in any of those agreements.
24 Therefore they must remain intact. They can't be
25 modified by this board. They're specifically carved

1 out in those agreements.

2 Did you need to say something?

3 Okay.

4 Okay. Also they say that the pools
5 will be getting an additional 61 days off per year.

6 We discussed a lot in our opening submission about the
7 cycle times. How these pools already obtained, just
8 because of the normal rotation of the board, the
9 mileage component on the length of run, many long
10 pools and medium-length pools already have time off
11 built into them. And the carrier is saying we're
12 adding additional time off.

13 What they're actually doing under the
14 proposal is requiring these employees to work more
15 with that irregular service and just giving them one
16 day off after five, which creates, especially on the
17 extra boards, essentially, a floating day off that you
18 can never schedule for because you have to obtain
19 those starts. So it's really a floating day off
20 system that you can't completely rely upon to schedule
21 an appointment.

22 The guaranteed pools, they mention
23 trading turns is not profitable, it creates this
24 gamesmanship. It's really no harm at all to the
25 carrier because the employees trade positions on the

1 pool. They both are required under the proposal to
2 work the next trip. So the service is still
3 protected. Carrier's paying the same thing because
4 the employees are still working the same amount. It
5 helps them avoid a layoff and gain those few extra
6 hours they may need to go to a doctor's appointment or
7 see their child's rehearsal.

8 So it's a valuable tool for them to
9 avoid unavailability. So the gains from that carrier
10 could well attain are -- could be significant, and it
11 would be a great benefit for the employees on those
12 pools.

13 Temping. When we talk about temping,
14 adds displacements and unpredictability. When you
15 have a no-bid assignment, you allow somebody to temp
16 on the assignment, writing the bulletin, those things.
17 That actually -- I guess what carrier is saying and
18 what I'm getting from them is they'd rather fill that
19 position off the extra board each day than have an
20 employee just move to that and work it regular until
21 the bulletin closes because that's what SMART
22 proposed. Don't fill that every day. Allow someone
23 to go on that, the senior person who has a bid on.
24 Let them go to it and write it because they're
25 probably going to be working it and be awarded the

1 assignment when it's done anyway. So you create less
2 turn on the extra board, less manpower on the extra
3 board.

4 Daily preference. I believe Ms. Powell
5 testified that it's this paper system and they still
6 use it today. Kind of question that because our
7 employees submit their bids electronically through
8 carrier's automated system, they view their bids
9 electronically, they view assignments electronically,
10 and they receive notifications of their assignment
11 electronically. And in this very intensive electronic
12 world with AI and everything else we have in
13 technology, it's hard to believe that we still have
14 paper systems going on at UP.

15 I need to briefly address the STB data
16 that they had slides of showing that the BNSF holds up
17 more trains for crews. I'd like to point out that
18 during that same timeframe, BNSF experienced 29.4%
19 more trains held for locomotives and other events than
20 Union Pacific did. Now, when you have locomotives
21 breakdown en route, you have track break, you have
22 weather-related issues, anything contributes -- all
23 those things contribute to crews being held because
24 you need more crews to get trains over the road. You
25 have a train that expires in hours of service because

1 the locomotive breaks down and causes the five trains
2 behind it to expire in hours of service, you burn
3 through your manpower quickly. So that's not a full
4 picture saying that it's completely based off the 6:3
5 implementation that occurred. There's other factors
6 that contribute to that.

7 Last one. Floating week. So the
8 float-week vacation. Ms. Powell stated that is an
9 issue because it causes disruption in service because
10 you have those single days -- that week of vacation
11 that floats through the year. You can take one day as
12 you need it off that single week. So that disrupts
13 things. It causes countless issues. Current system,
14 she's not incorrect because a pool employee could take
15 one of those days to miss their entire trip.

16 Under the self-supporting model, when
17 someone takes a -- as the organization proposes, when
18 they take vacation day, that turn is removed from
19 board just for that day till they mark up. Then
20 they're right back on the board. So they're not
21 waiting for that turn to circle back. It buys them
22 one day, not two to three. So that disruption they're
23 talking of, it won't occur in the new model, really,
24 underneath either parties' proposal. So I don't see
25 why the carrier would be opposed to that. I could see

1 it in the current model of maybe you have to address
2 specific things but not in the in the future
3 self-supporting model.

4 That's all I have. Mr. McKinley will
5 speak.

6 ARBITRATOR: Thank you.

7 MR. MCKINLEY: I will be brief here. I
8 wanted to address something that Mr. Munro stated
9 earlier about the crew-consist issue before PEB250,
10 and it's worth addressing because the IGN, TMP
11 agreements has become a large issue in this matter.
12 And I just wanted to, essentially, set the record
13 straight on what the issue was with crew consist, the
14 moratorium, and what PEB250 had to say about that.

15 Mr. Munro stated that the union or that
16 the carriers were all bargaining in a coalition with
17 each other. UP was included and other carriers but
18 they invited the union to bargain over the issue of
19 crew consist. It's not exactly accurate depiction of
20 what happened. What happened -- and this is all a
21 matter of record in court cases and such that the
22 carriers served on the union a Section 6 notice to
23 open bargaining and made a demand that the union
24 bargain nationally over crew consist, or in the event
25 the union wouldn't agree to bargain nationally over

1 crew consist, it would produce a -- and although they
2 called an alternate-wage proposal, which would cut
3 conductor pay drastically if the union wouldn't agree
4 to bargain over crew consist.

5 I wouldn't exactly describe that as an
6 invitation to bargain. It's more, you know, of a
7 threat. And that threat came to fruition two days
8 later when they sued the union in federal court
9 seeking an injunction to force the union to bargain
10 over crew consist. You've heard about the LaRocco
11 Award that was a result of the arbitrations that came
12 out over the moratorium, and the issue was brought up
13 the PEB250 on the crew-consist issue.

14 It was in the context of the carrier
15 wish to create an arbitration backstop if the
16 crew-consist issue wasn't resolved in local
17 bargaining. I think it was six months. But the point
18 is that PEB250 rejected that. They rejected anything
19 to do with crew consist. The recommendations had
20 nothing to do with affecting crew-consist agreements
21 or anything like that. They were clear. It's
22 supposed to be handled locally. And in the case of
23 the IGN TMP, that is by mutual consent. And I just
24 wanted to reiterate or explain that history to provide
25 a little bit more context to what Mr. Munro stated.

1 And that is all I have.
2 ARBITRATOR: Anything else?
3 MR. MCKINLEY: No, ma'am.
4 ARBITRATOR: Thank you.
5 Mr. Munro.
6 MR. MUNRO: I don't feel a need to
7 engage any further back and forth, Madam Chair. I
8 think we're done, aside from closing statements.
9 ARBITRATOR: Likewise?
10 MR. MCKINLEY: Likewise. Yes.
11 ARBITRATOR: Okay. Thank you. Would
12 the parties like a break prior to the closing
13 statements?
14 MR. MUNRO: Short one would be good.
15 MR. MCKINLEY: Short one.
16 ARBITRATOR: How much time would the
17 parties like?
18 MR. EDINGTON: Five minutes is fine.
19 ARBITRATOR: Okay. We'll break for
20 five minutes.
21 (Whereupon, a break was taken
22 at 1:29 p.m.)
23 (Back on the record at 1:40 p.m.)
24 ARBITRATOR: Parties ready for the
25 closing? And for clarification purposes, there will

1 not be a response after each party has presented their
2 closing.

3 Okay. All right. Whenever you're
4 ready, Mr. Munro.

5 MR. MUNRO: Thank you, Madam Chair.
6 Have no fear. Though the opening says rebuttal, this
7 is in fact a closing. We --

8 ARBITRATOR: I have already received.

9 MR. MUNRO: It's just the title that's
10 wrong. I can provide a copy of the closing slides if
11 you wish them, but you've seen them all before.

12 ARBITRATOR: Okay, then that's your
13 call. I'm not requiring it.

14 MR. MUNRO: Thank you. To sum up this
15 case, I'd like to revert back to the framework that I
16 started with. The scope of the question before the
17 board, the issue of equity, and the question of
18 workability. With respect to scope, I think that we
19 may have made some progress this week in actually
20 narrowing the parties' differences because we agree,
21 as Mr. McKinley has said, that the scope of this
22 proceeding is limited to what is contained in
23 Articles 5, 6, and 7.

24 You have the text of the agreement, the
25 CPKC Awards, and you heard Mr. Branon's testimony

1 about the party's intent with respect to that issue
2 yesterday. Mr. Ferguson, as I understood it, agrees.
3 And he added that, well, the parties could agree on
4 compensation under Articles 5, 6 and 7, and sure, of
5 course, they could agree. But the question is, what
6 happens when you get to arbitration? When you get to
7 this process? And here it's a narrower exercise.

8 We're talking about what is
9 specifically contained within those three articles.
10 And again, you saw this in the opening. Most of what
11 the union has asked for is not before you. In our
12 reply submission, I introduced the idea of anchor
13 bias. This idea that if you ask for the sun and the
14 moon and the stars, then even if you get a percentage
15 of that, you've won.

16 We'd ask the board not to fall for that
17 strategy. This is not a case where splitting the baby
18 is the right outcome. The better approach for this
19 board is a two-step analysis. First, discard
20 everything that the union has proposed that is outside
21 the scope of this board's jurisdiction. All of those
22 items in red are not before you, and, to be fair, you
23 should also discard any specific items that the
24 carrier has proposed that are outside the scope of
25 your jurisdiction.

1 Then take the remaining items that are
2 properly before you and reach a fair and equitable
3 distribution of costs and benefits for those items.
4 Which brings me to the second part of my rubric. And
5 once again, these slides will advance. This has been
6 the subject of an enormous amount of discussion this
7 week. One thing that stands undisputed is that the
8 cost of the carriers -- of the union's ask -- excuse
9 me -- is more than \$300 million per year, including
10 more than \$200 million in costs per year that are not
11 properly the subject of this proceeding.

12 I'd like to emphasize, moreover, that
13 the remaining almost hundred million dollars that
14 they're asking for here is solely their scheduled-rest
15 proposal. So how do they try to balance that? Well,
16 this comes back to what I said earlier this morning is
17 the key pivot issue in this case. And that is the
18 suggestion that we will save \$333 million in
19 extra-board savings.

20 As Mr. Janke has explained, that is
21 completely illusory, both because it is not true and
22 because this is about the allocation of work, not an
23 increase or decrease in it. So somebody's going to be
24 doing that. Somebody's going to be earning that
25 money. In fact, the board heard Mr. Janke confirm

1 this morning that we will still need a large
2 extra-board workforce.

3 Now, Mr. Edington in surrebuttal said,
4 wait a minute, he said you're going to move at
5 least 50% of their work. That's not what Mr. Janke
6 said. What he said was 35% of what the extra board
7 currently does isn't even at issue because it's not
8 related to the pool. And of the remaining 65%, 14
9 points of that is hours of service. And only a
10 percentage, not all, a percentage of that moves to the
11 pool under our proposal.

12 And moreover, the extra board will
13 continue to support pool vacancies, both because
14 vacancies occur unplanned on occasion and because
15 sometimes the pool is exhausted. And so the upshot is
16 we are still going to have, as Mr. Janke testified,
17 about 1500 at least employees on the extra board. And
18 even if we didn't, even if all those extra-board jobs
19 were going away, they would only be moving to the
20 pool.

21 And they don't have anything to say
22 about that. There's no rebuttal on this earnings
23 point, that it is not a cost savings. The testimony
24 and evidence on that point is undisputed. I think
25 it's clear at this point which way the wind is blowing

1 on this particular point. The union silence on this
2 issue speaks volumes. They have a number of
3 well-crafted and extensive responses to many of the
4 things that we've said. They say nothing about this.

5 Now, our proposal, by contrast, is well
6 balanced. This is, again, the slide that you saw in
7 the opening. We're proposing 18 million per year in
8 cost, about 16 million in savings, but the balance
9 that you see here depends upon the adoption of the
10 carrier's proposed work-rest model because even the
11 carrier's proposal costs 18 million a year. Other
12 models, the ones that the union has proposed, cost
13 considerably more.

14 If you were to impose a 4:1 schedule
15 instead of a 5:1, that's a lot more. Imposing a 5:1
16 on the extra board instead of SMART rest, that adds a
17 lot more. There's no other way to balance this out
18 beyond the savings that we've identified without
19 making radical changes in things that are, frankly,
20 outside this board's jurisdiction. We are not asking
21 this board to reach out to change things that are not
22 contained within Articles 5, 6, and 7. We think that
23 the board should stick to those particular subjects,
24 and, and if it does that, there's a limited set of
25 things it can do to reach an equitable resolution.

1 The third item and final item in my
2 suggested rubric for the board's analysis is
3 workability. And there's two related points that have
4 been debated here. We've emphasized that the PEB sets
5 out the goals, what it's trying to achieve, what it
6 intended the parties to adopt, and those include
7 certainty in scheduling for employees and operational
8 benefits and cost savings for the carrier. And how do
9 you get there?

10 Well, you get there through this. That
11 provides both, both certainty, extra time, certain
12 time off for the employees, improving their quality of
13 life, while at the same time, offering the carrier
14 efficiencies, operational benefits and cost savings.
15 Now, the other piece of the workability puzzle is how
16 this will function in practice. And I'll conclude
17 with this slide that Mr. Svatos spoke about this
18 morning.

19 Now, I won't pretend to understand the
20 math that underlies all of this, but I do understand
21 the concept, that if you impose a system that will
22 inevitably generate wild swings in the number of
23 employees who have to transfer between jobs on a
24 weekly basis, it will cause chaos. That system is not
25 good for anyone. It's not good for Union Pacific,

1 surely, but it's also not good for the employees. If
2 the goal here is to improve quality of life, what the
3 union has offered is not the solution. I'd like to
4 thank the Board for its time and service in this
5 matter.

6 And I'd also like to thank the union
7 advocates, particularly Mr. Edington and Mr. McKinley,
8 for their professionalism.

9 It is, as always, a pleasure to work
10 with them. Thank you.

11 ARBITRATOR: Mr. Edington.

12 MR. EDINGTON: Madam Chair, me and the
13 other general chairpersons here today were chosen by
14 our membership to represent their interests and their
15 livelihoods. As you've heard earlier from the
16 organization's witnesses, their testimony, we all have
17 extensive experience working on the property, on
18 various assignments that we discussed that are here
19 before the Board today, giving us firsthand knowledge
20 of the provisions presented and how they function, how
21 they will affect employees' work-life balance.

22 Our goal from the beginning was to, in
23 both formal and voluntary negotiations, was to provide
24 predictable work-rest schedules and improvements to
25 employees' quality of life that work in tandem with

1 the efficiencies in Article 6 and 7. We exhibited
2 this commitment in every proposal throughout the
3 voluntary and formal bargaining process. The
4 organization's proposed remedy doesn't contain any
5 provisions that are specifically prohibited or outside
6 the scope of Articles 5 and 7 or the corresponding
7 questions and answers. It's well reasoned, thought
8 through, and provides both parties with an equitable
9 and fair resolution.

10 The Summary of our Proposal, we
11 displayed how voluntary work-rest models will work in
12 tandem with the current operations and ensure all
13 pools, guaranteed or non-guaranteed, are treated
14 equally so employees can observe predictable time off
15 when they need it.

16 The regulation table for pool freight
17 takes the length of run into account and ensures
18 earning potential is maintained for pool freight
19 employees; provided adequate, compensated rest
20 opportunities through proper adjustments to
21 compensated time off and increased flexibility and
22 access to those compensated days; It preserves current
23 rest opportunities outside of RSIA where they exist
24 and at-rest opportunities across the system for
25 pool-freight employees; earn days off; the turn-trade

1 option; proper adjustments to provisions such as
2 away-from-home terminal meals, certification
3 allowances, held away-from-home terminal pay, etc.
4 That all directly relate to work-rest schedules,
5 regulation factors, seniority moves, vacancy
6 procedures, and guaranteed boards.

7 In addition to those provisions,
8 adjustments I just mentioned, we proposed a
9 system-wide process for seniority moves, vacancy
10 procedures, bidding rules in lieu of the numerous
11 local agreements that exist today. These provisions
12 will reduce unavailability time, get the right
13 employee on the right assignment without forcing them
14 long distances from home and allow extra boards a
15 cross protect in yard and road service, which will
16 increase productivity on those guaranteed boards.

17 Administration of these many items will
18 be simpler, quicker for carrier's crew management
19 allowing them to reduce administrative costs. Now, in
20 contrast, carrier's proposal includes several
21 provisions that are specifically prohibited in
22 Articles 5 through 7 and the corresponding questions
23 and answers. For example, proposal to shift to
24 regular service from extra-board pool rate; the
25 elimination of protecting extra boards; the mandatory

1 rest on extra boards; proposed regulation table that
2 does not take the length of run into account thus
3 reducing earning potential of employees; elimination
4 of daily preference boards that already allow
5 employees to bid assignments using their seniority
6 preference of assignment, which would take flexibility
7 and work schedules away from those employees;
8 Elimination, not the creation, of rules that allow for
9 rest opportunities outside of RSIA; modifications to
10 the extra boards and supplemental boards on the IGN
11 and TMP properties, which are strictly prohibited in
12 those crew-consist agreements in the LaRocco Award.

13 This board is entrusted with a very
14 difficult decision. There are, as Mr. Munro said, two
15 opposing views on costing and what items would be
16 necessary to provide a balanced quid pro quo between
17 the parties. Carrier has hidden their actual savings
18 from the board by claiming the extra boards will
19 continue to protect pool-freight vacancies and is
20 using a biased and improper interpretation of the
21 organization's proposal and performing their analysis.

22 I asked the board to look at what's
23 been done by other Class 1s, specifically the BNSF and
24 NS that we talked about today -- yesterday. They are
25 a good example of the parties identifying an equitable

1 and balanced solution the Board can reference. As I
2 discussed in our presentation, those carriers are in
3 the same industry, compete for the same business, and
4 would not agree to such financial commitments, which
5 are, according to Union Pacific, worth hundreds of
6 millions of dollars unless they deemed it appropriate.

7 In other words, they wouldn't agree to
8 anything that would jeopardize their operations,
9 profitability, or ability to compete with business
10 unless they felt it necessary to do so. Our members
11 quality of life or whether it will be improved or
12 reduced to what it was during the pandemic when there
13 wasn't manpower shortages is what's at stake. Their
14 quality of life just as important here today as it was
15 before PEB250 when we advocated for voluntary rest
16 days and also before the Surface Transportation Board.

17 I will close with this, over the past
18 few days, carrier discussed in depth about costing
19 inefficiencies but missed one very important item.
20 How their proposal would actually improve their
21 employees' quality. When reviewing each party's
22 proposal, please consider the employees who are out
23 there today and the system that will make it better.
24 Will it make it better?

25 Consider the wife who misses her

1 child's birthday or school event because she couldn't
2 get a vacation day. Consider what system would not
3 only work for her and the other current employees but
4 also for those considering a career at Union Pacific.
5 The organization's proposal would not only fix the
6 system but would provide the carrier with the
7 efficiencies that it sought. And it's a true win-win
8 that benefits both the carrier and the employees.

9 I want to thank you for your time, your
10 patience over the last few days, and we respectfully
11 request, on behalf of our members, adoption of the
12 organization's proposal.

13 Thank you.

14 ARBITRATOR: Thank you.

15 Okay. That concludes the closing
16 arguments.

17 The closing arguments will not be
18 submitted in writing, so at this point, I have no
19 further questions or comments. I believe it would be
20 appropriate to close the hearing.

21 However, there are a couple of things I
22 would like to mention, and I am in receipt of the
23 rebuttal documents that were submitted.

24 In addition, my understanding is that
25 both the carrier and the organization will submit

1 exhibits in various formats. And I don't need
2 exhibits that have not been alluded to. Okay?

3 And in addition to that. Yeah. Right.

4 I mean, with respect to the exhibits.

5 Okay. So I've been asked to place on
6 the record that the transcripts will be available
7 within 10 days of tomorrow's date. 10 days of
8 tomorrow's date. And you can just indicate that on
9 the record as well. And my understanding is that a
10 decision on this matter is due 30 days from the date
11 of the receipt of the transcript. And we'll be
12 discussing that further in the second quarter. Okay.

13 Is there anything else?

14 Anything else from the parties, Mr.
15 Edington?

16 MR. EDINGTON: No, Madam Chair. Thank
17 you.

18 ARBITRATOR: Mr. Munro?

19 MR. MUNRO: No, ma'am. Thank you very
20 much.

21 ARBITRATOR: And again, thank you all
22 very much. Thank you for your professionalism. You
23 both very vigorously and professionally put forth your
24 respective cases, and I appreciate that.

25 Pleasure to work with you. It's nice

1 meeting everyone.

2 (Whereupon, proceeding were concluded

3 at 2:00 p.m.)

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ARBITRATION - JANUARY 23, 2025
UNION PACIFIC v SMART-TD

JOB NO. 1400040

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 6th day of February, 2025.

MACY THOMPSON

ARBITRATION - JANUARY 23, 2025
UNION PACIFIC v SMART-TD

JOB NO. 1400040

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