

EXHIBIT 17

UNION MEMBER'S DISSENTING OPINION

To

SPECIAL BOARD OF ADJUSTMENT NO. 1208, CASE NO. 1

(Neutral Earlene R. Baggett-Hayes)

The Organization respectfully dissents from the Majority's findings because the final Award (Exhibit A) exceeded the scope of Articles V-VII (along with the corresponding questions and answers), set forth in Public Law No. 117-216, and therefore falls outside the neutral's jurisdiction. The Neutral demonstrated a substantial preference toward the Carrier by removing a significant portion of the Organization's proposal in the Preliminary Findings and Order to Provide Post-Hearing Submissions, on the grounds that such provisions were beyond the Board's jurisdiction. In contrast, the following provisions that are outside of the Board's scope and jurisdiction were nevertheless incorporated into Exhibit A of the Award. The Neutral offered no analysis or rationale for establishing jurisdiction with respect to the provisions below, nor explained how their inclusion fell within the scope of Articles V-VII.

Article V – "SMART REST" on Road Extra Boards

SBA 1208, Exhibit A, Article V, B. fails to provide employees assigned to road extra boards with voluntary **assigned** days off, as required in Article V of Public Law No. 117-216, which states, in pertinent part:

*Any General Committee seeking to establish rules creating **voluntary assigned days off** in thru freight road service shall serve a written Notice on the Carrier of its desire to establish **voluntary assigned days off** agreement rules*

The Arbitration Board shall have jurisdiction to determine whether and how the rules referenced in this Article will be implemented.

Q4. Will the Union be permitted to serve Notice on the Carrier of its desire to establish rules for voluntary assigned days off for extra boards (including combination road/yard extra boards, if applicable,) covering thru freight road service?

A4. Yes, pursuant to the timeline in Article V, except as limited by Side Letter #5.

Q7. Does Article V apply to extra boards?

A7. Article V applies to all thru freight road service, including extra boards that protect thru freight road service.

The imposition of “smart rest,” which requires an employee to obtain five consecutive RSIA starts before becoming eligible for a 24-hour rest period, effectively creates a system with **no assigned** off days, in contravention of Article V of Public Law No. 117-216. Article V expressly directs the Arbitration Board – to determine *whether and how* the rules referenced in the Article will be implemented, but the plain text denies the Board the authority to substitute assigned days off with a work/rest rule that fails to provide such. Under the “smart rest” system, employees on extra boards may be forced to work for weeks on end before qualifying for the necessary consecutive RSIA starts, meaning they have no assigned days off. This outcome is directly contradictory to both the terms of Article V and the stated purpose of the agreement, *i.e.* to provide employees more predictability in scheduling.

In the Award, the Neutral recognized both the requirement to provide assigned days off, and the benefit of such for pool freight employees. Yet, the decision contradicted the very logic and requirements of Article V when it declined to extend the same protections employees on road extra boards. Evidence of this is found in SBA 1208 Award, page 5:

“This model better supports the objective of providing a better quality of life for employees that the work-rest model proposed by the Carrier, which contemplated four (4) workdays, or available for work days, followed by one (1) voluntary rest day (4/1)”

The failure to provide regular, assigned days off for extra board employees, represents a systemic issue that contravenes the Congressional mandate set forth in Article V and adversely affects thousands of employees who were promised predictability and fairness in their work schedules.

Article V – Elimination of Additional or Extra Rest Provisions

The elimination of existing provisions that provide for extending, additional, or extra rest on existing pools and extra boards, as outlined in Exhibit A, Article V (B) and (D) of Public Law No. 117-216, contradicts the plain terms of Article V and is contrary to arguments advanced by both parties at the hearing. The Organization argued to retain these provisions, as they clearly meet the requirements listed in Article VII(C)(a) which states, in pertinent part:

“Opportunity for employees to observe rest outside the requirements of the Rail Safety Improvement Act”

Carrier witness Jennifer Powell confirmed that the Carrier did not intend to eliminate this provision during her testimony on day three of the hearing, when clarifying their position and intent behind their proposal (Carrier Exhibit 7).

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WITNESS POWELL. Okay. Okay. We'll move on to SMART's presented this slide in regard to that they want to preserve, you know, certain rules and that we're trying to eliminate certain rules... So in regard to turn rest, now, we have different rules and they have a lot of different names. There's turn rest, there's extra rest, there's extending rest, there's a lot of different things. So I first want to clarify one thing.

*Yesterday Mr. Edington was mentioning a different rule provision **that's called extra rest.** And that is something specific to the territory, UP Eastern District territory, that he is the general chairperson of. **That is not what our proposal is talking about. Our proposal -- and we don't propose to eliminate that provision. Our proposal is talking about something called turn rest which is completely different than extra rest. It only applies to one territory, the MOP upper lines...** So what turn rest is, is when that extra-board person takes that turn out, and then the turn returns back to the board at home. That turn actually gets rest associated with it by agreement, not the person. The extra-board person will go back to the extra board, but that turn -- so when the regular assigned person, those two that turn, they have to wait for that turn itself to become rested. It's a rule, again, that's unique to one specific location. **Our proposal was to clarify that that rule is going to be eliminated.***

Notwithstanding the foregoing, the elimination of this vitally important provision, which neither party sought to eliminate at the hearing, has deprived employees on the affected territories of a critical tool they have relied on for decades to manage rest and would continue to utilize as a means to improve their quality of life going forward.

Article VI – Elimination of Daily Preference Boards

The elimination of daily preference boards, as contained in Exhibit A, Article VI(R), was likewise beyond the Board's authority. Article VI of Public Law No. 117-216 only gave Carriers the ability to seek a process to electronically manage automated bid scheduling, submitting of preferences, and job assignments. Carrier officer Powell testified on day three of the proceedings that administration of daily preference boards involved an outdated, paper process that was inefficient. Ms. Powell testified, in pertinent part:

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*There is a bid sheet for every single employee that's stored in a binder. **It's all paper, stored in a binder, and the binder is about eight inches thick.***

*Again, **this method is outdated and inefficient and unfortunately this same binder system is used today, two decades later.***

While this inefficiency may warrant modernization through electronic systems, it does not justify eliminating the boards altogether. Public Law No. 1117-216 contains no language authorizing the elimination of daily preference boards, as the Neutral has done, but only allows the administration of such to be conducted electronically.

Article VII – Extra Boards and Supplemental Extra Boards

Exhibit A, Article VII (C)(2), improperly grants the Carrier the ability to eliminate, combine, or otherwise modify extra boards and supplemental extra boards on the IGN and T&P properties. These boards are established under, and governed by, the governing Crew Consist Agreements. Those local Crew Consist Agreements carry indefinite moratoria that bar changes “in any forum,” including this Board, unless both parties consent, making this an item that was not legitimately before the Board.

The Organization served notice to Carrier on July 24, 2024, stating that voluntary discussions over these boards had ceased and would not be included in the binding arbitration. As argued before this Board, this issue had recently been resolved at PLB 7960, where Neutral LaRocco held that the moratorium protecting these agreements is indefinite and that changes can only be made through mutual agreement.

The Carrier responded on August 19, 2024, with an affirmative defense, asserting that such boards were included in negotiations under the Section 6 process. However, the Carrier failed to meet its burden to demonstrate how the local Crew Consist Agreement could be legitimately altered under Public Law No. 117-216 or how the topic of extra boards was permissibly included here in light of the LaRocco award. Further, the Carrier forfeited its right to raise this argument procedurally by failing to progress it to a procedural board prior to signing the Agreement to arbitrate on September 16, 2024.

The Neutral nevertheless ruled on the matter, failing to establish jurisdiction and exhibiting notable partiality towards the Carrier. Such jurisdictional shortcoming, as well as limited understanding of the distinction between the Section 6 process as it relates to National Handling versus local matters of Crew Consist, are readily apparent to any reader of the Award.

The Crew Consist Agreements were carefully crafted and include provisions intended for both employee and Carrier benefit, representing long-established quid pro quos that have remained in place for decades per the parties’ agreement. The provisions that support employees were obtained through significant negotiation efforts. However, these provisions were eliminated when the Neutral unlawfully acted outside the Board’s jurisdiction.

Article VII – Any Qualified Employee

To the extent the provision contained in Exhibit A, Article VII (E) gives the Carrier the ability to use “any qualified employee” to work an assignment without penalty, such is outside of this Board’s scope and jurisdiction. The Crew Consist Agreements in effect across the Carrier’s system prohibit any Carrier supervisor, official, or non-craft employee from being used to supplant or substitute in the exclusive work of any train or yard crew working under SMART TD Agreements. The Organization argued such position at the hearing and provided the Neutral with governing Crew Consist Provisions that prohibit the use of any qualified employee.

1984 Crew Consist Agreement – Eastern District

Section 4. Non-Craft Infringement.

No Carrier supervisor, official, or non-craft employes (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU (C) and (T) Agreements.

1991 C&NW Crew Consist Agreement

Side Letter No. 7

In connection with our agreement signed today, we agree that no Carrier Supervisor, Official or non-craft employee (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU Agreements.

1980 Idaho Crew Consist Agreement

Section 4. Non-Craft Infringement

No Carrier supervisor, official or non-craft employes (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU (C), (TI & (S) Agreements.

1980 Pacific Northwest Agreement

Section 4. Non-Craft Infringement

No Carrier supervisor, official or non-craft employes (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU (C), (TI & (S) Agreements.

1980 IGN Crew Consist Agreement

Article 4. Rights To Perform Service By Employees In Craft

No Carrier supervisor, official, or non-craft employees (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU Agreements.

1980 Missouri Pacific Crew Consist Agreement

Article 4.

No Carrier supervisor, official, or non-craft employes (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU Agreements.

1980 T&P Crew Consist

Article 4.

No Carrier supervisor, official, or non-craft employes (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU Agreements.

1984 SP West Agreement

Article IX – Section 5

Non-Craft Infringement. In the application of this agreement, **no Company supervisors, officers or non-craft employees (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard service employee.**

The process of modifying these provisions can only be accomplished through a voluntary and mutual agreement, or the Section 6 process, pertaining strictly to Crew Consist Agreements. This was upheld at PEB 250 and in recent arbitration with Neutral LaRocco (PLB 7960). Throughout the process over the instant matter, there were no Section 6 notices sent to the Organization from the Carrier over Crew Consist. It is therefore undeniable that any ruling curtailing this provision would constitute an improper modification to the Crew Consist Agreements in effect across the Union Pacific system.

Furthermore, nowhere in Articles V-VII is it contemplated that a carrier would be permitted to use non-craft employees in such a manner. It is well-established in the public record that the Carrier has engaged in a pattern of voluntary, drastic reductions in its workforce in recent years, creating its own manpower shortages. These self-induced shortages led to numerous documented issues with shippers, including the use of embargoes to reduce congestion and improve velocity. By allowing the Carrier to use “any qualified employee” to work assignments, even under the guise of “limited circumstances” and “without prejudice to either party’s positions,” the Board has exceeded its jurisdiction and granted the Carrier a substantial benefit it has long been unable to obtain through bargaining. The future ramifications may well extend far beyond the narrow scope suggested by the Board.

For the foregoing reasons, the Organization fervently dissents to the Majority’s findings and encourages future reviewers of this award to disregard the Neutral’s decision and rationale as an outlier in this industry and one that’s only aimed at appeasing the Carrier.

Respectfully submitted,

Gary W. Crest

Gary W. Crest
Union Member
Special Board of Adjustment No. 1208, Case No. 1

Roy Davis

Roy Davis
General Chairperson
GO-577

Luke Edington

Luke Edington
General Chairperson
GO-953

Todd Campbell

Todd Campbell
General Chairperson
GO-887

Scott Chelette

Scott Chelette
General Chairperson
GO-927

Joe Cornelius Jr.

Joe Cornelius Jr.
General Chairperson
GO-569