EXHIBIT 6

SPECIAL BOARD OF ADJUSTMENT 1208

Case 1

SMART Transportation Division
v
Union Pacific Railroad

with

Neutral Earlene R Baggett-Hayes

Organization's Opening Submission

QUESTION AT ISSUE

"What is a fair and equitable agreement that implements Articles V-VII of Public Law No 117-216?"

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INTRODUCTION

The parties are before this Special Board of Adjustment due to a dispute over the implementation of Articles V-VII of Public Law 117-216. The history of this dispute is lengthy but requires a brief summation in order to fully understand the issues in dispute and the requirements imposed by Congress in resolving the matter.

A. 2019 Round of National Negotiations.

On November 1, 2019, National Railway Labor Conference (NRLC) Chairman Branon served notice (Attachment B) to SMART-TD President Ferguson for the 2020 national wage, rules and benefits round of collective bargaining **(Exhibit 1)**. The nation's railroad carriers, which included Union Pacific Railroad, proposed modernization of "anachronistic provisions" they believed would provide "better and more predictable schedules, greater access to technology, and a wider range of jobs with less travel." One tenet of the carriers' proposal was the modernizing of assignment procedures which the carriers claimed would "provide benefits for both carriers and employees."

In response, SMART-TD President Ferguson served notice (Attachment A) to Chairman Branon on November 20, 2019 **(Exhibit 2)**. The Organization's proposal contained numerous items specifically directed toward improving employees' quality of life such as, increases to held-away pay, meal periods, meal allowances, away-from-home meals, remote control compensation, vacation and personal leave allotments, along with expanded bereavement, lodging for employees forced from home, improved train line-ups and elimination of the service scale.

Little progress was made at the bargaining table throughout 2020 and 2021. On January 20, 2022, a notification of impasse in rail contract negotiations was declared. All the Organizations involved in national bargaining filed for mediation by February 1, 2022.

In May 2022, the National Mediation Board (NMB) called all parties together for a rare "super mediation" meeting. The parties met for three straight weeks, with negotiations remaining at an impasse. Given the impasse, the NMB proffered binding arbitration on June 14, 2022. The proffer of arbitration was not accepted by the parties and a 30-day cooling off period was triggered on June 16, 2022, after which time the parties could engage in self-help that would lead to service disruptions.

On July 15, 2022, President Biden signed an Executive Order creating a Presidential Emergency Board (PEB 250) of neutral arbitrators to investigate and make recommendations that could end the dispute. PEB 250 was made effective on July 18, 2022, and hearings before the board were held July 24-28, 2022, and transcribed **(Exhibits 3-7)**.

B. Presidential Emergency Board 250

The rail industry experienced extremely turbulent operations in the years leading up to PEB 250. Union Pacific began implementing precision scheduled railroading as an operating model in October 2018. A key component of this model is increased utilization of resources (including manpower) which results in an overall decrease of resources as those remaining are being used to their maximum potential. The current collective bargaining agreements prevented Carrier from obtaining the efficiencies it desired, which prompted Carrier to seek such efficiencies at the bargaining table, as reflected in Carrier's submission to PEB 250 **(Exhibit 8)**.

In March 2020, the COVID-19 epidemic became widespread. In response to the decline in rail volume, Union Pacific significantly reduced manpower while almost simultaneously imposing a strict attendance policy that dismissed employees for a single violation. Carrier's reductions in manpower resulted in 3,007 TE&Y employees losing full-time employment within one month; 5,017 within two months; and 5,056 within three months **(Exhibit 9)**.

As traffic volumes returned, increases to manpower were minimal, at best. What remained of the TE&Y workforce during the pandemic experienced increased workloads with little to no relief for months on end, as furloughed employees were not responding to recall or returning to service. The manpower deficiency and stringent attendance policy caused a serious deterioration in the quality of life for existing employees, prompting the Organization to seek provisions before the PEB that would improve the current conditions and prevent similar from occurring again in the future **(Exhibit 10)**.

Carrier's struggle to retain, recall and attract new employees throughout 2020 and 2021 resulted in reports of subpar performance, missed switches, delays at intermediate points, extended out-of-route movements and prolonged dwell at origin from shippers. Reports from shippers were filed with the Surface Transportation Board (STB). In response to these concerns, STB Chairman Martin Oberman sent written correspondence on May 27, 2021 **(Exhibit 11)**, to Union Pacific Chairman, President, and CEO Lance Fritz, requesting an update and detailed description of Union Pacific's plan to meet current and anticipated manpower demands:

> As part of this update, I am specifically requesting that you also address **whether you have any long-term plans**, including your hiring plans for 2021 and 2022, t**o reverse any of the diminishing workforce levels which have resulted from your strategies in recent years**. ***

The STB's interest in Carrier's inability to service customers was escalated to a public hearing on April 26 and 27, 2022. Testifying before the STB on behalf of Union Pacific was Executive Vice President Elizabeth Whited and Executive Vice President of Operations Eric Gehringer **(Exhibits 12** and **13)**. In her testimony, EVP Whited acknowledged the inadequate percentage of furloughed employees returning to service from recall (*"we found a significant number of employees, in our case around 50 percent, were choosing not to return" – Exhibit 13*, testimony page 816).

EVP Whited further stated that Carrier was struggling to hire at locations with tight labor markets, that potential employees were seeking *"more flexibility, better hours, set schedules,"* and that Union Pacific was *"working to create jobs that are more appealing, and meet the needs of the future workforce, as well as the workforce of today, and we will need to work closely with our union partners to address those needs" (Exhibit 13*, testimony page 817).

Carrier's April 2022 position on the described hiring challenges somehow no longer existed a few months later *(Exhibits 3-7)*. In July 2022 CEO Fritz testified before PEB 250 that *"we've got great jobs. We've got people who want to work here . . . And we're hiring like mad right now" (Exhibit 4*, testimony page 169*).* There is no question that this testimony painted an overly optimistic picture of the challenges faced by Carrier in hiring and retaining TE&Y employees.

In their submission to the PEB, the carriers sought modernization of the job assignment process, self-sustaining freight pools, and the regulation of pools using starts instead of mileage. These changes would, in the carriers' opinion, improve operational efficiencies and give employees better predictability of schedules *(Exhibit 8*, page 12*)*. In exchange for those efficiencies, a process was offered by the carriers to secure fair quid pro quos at the bargaining table, with a binding arbitration backstop *(Exhibit 8*, page 22*)*:

> *** **<u>Moreover, the Carriers have also offered a process to secure fair quid pro quos for any benefits that they may realize as a result of these changes.</u>** [12] ***
>
> ---
>
> [12] As noted above, **the Carriers' proposals would allow the parties to negotiate the details of implementation, including any *quid pro quos*,** at the local level, with binding arbitration if the parties are unable to agree. This is a time-tested way of addressing issues of national concern while still acknowledging that individual circumstances might warrant a slightly different approach . . . .

PEB 250 acknowledged the carriers' willingness to negotiate appropriate quid pro quos with the Organization during the local bargaining process (**Exhibit 14**, page 90):

> The Carriers estimate the savings of their proposal at approximately **$38,000,000 annually in addition to the operational efficiencies that would result from these changes <u>and acknowledge their willingness to negotiate appropriate quid pro quos with the Organization during the local bargaining.</u>**

Nevertheless, Union Pacific would not acknowledge such commitments at the bargaining table.

A few months after providing this testimony to PEB 250, CEO Fritz testified before the STB, providing a contrasting view to his testimony before PEB 250. On December 13-14, 2022, CEO Fritz was questioned again by STB Chairman Oberman about Union Pacific's service and manpower issues **(Exhibit 15)**. CEO Fritz acknowledged the low recall rate of employees who had been furloughed (page 4) by stating, *"When you start going 12 to 18 months and 18 months and further, it it* [sic] *starts dropping pretty dramatically."* He also acknowledged Carrier's inability to hire at many locations (page 4), stating, *"We've still got boards that are very tight."* CEO Fritz also acknowledged the need to improve employee quality of life and maintain their wages: *"Now we got to balance that out so employees earn the expected wages that- that they hired for, uh, year after year after year . . . we have to do the work on quality of life for our employees, specifically unscheduled work."*

In summary, both parties obtained provisions they pursued before PEB 250, provided they bargained in good faith to ensure an equitable quid pro quo was achieved. Carrier's operational efficiencies must be balanced with improved quality of life enhancements for TE&Y employees in addition to rest opportunities provided in the Rail Safety Initiative Act (RSIA) **(Exhibit 16)**.

C. PEB 250 Report and Recommendation, Further Bargaining, and Congressional Action

PEB 250 issued its report and recommendations on August 16, 2022 (*Exhibit 14*). With respect to the matters at issue here, PEB 250 explained (pages 90-91):

> We recommend adoption of both the Carriers' proposals and those of the Organizations to the extent that they provide for bargaining in good faith over these inter-related subjects – bidding systems and requirements, the operation of extra boards, the operation and regulation of pools, and other provisions related to scheduling fairness, efficiency, certainty, and flexibility – and provide for an interest arbitration process in the event that full agreements are not reached.

Importantly, while PEB 250 recommended negotiations and an arbitration backstop, it expressed no position on what proposals should be adopted and, as stated above, recognized the inter-related nature of the subjects at issue. Indeed, PEB 250 stated (page 91), "*We wish to underscore, however, that we express no opinions concerning the outcome of those negotiations and that we do not recommend adoption of the specific language in any of the proposals*."

Shortly after PEB 250 released its report and recommendations, a tentative agreement was reached and sent to membership for a ratification vote on September 15, 2022 **(Exhibit 17)**. The vote was concluded on November 20, 2022, with the tentative agreement failing ratification. Subsequently, the tentative agreement that resulted from PEB 250's recommendations was passed into law (Public Law 117-216) by Congress on December 1, 2022, to be effective December 2, 2022 **(Exhibit 18)**.

D. Subsequent Bargaining Over Articles V-VII.

Public Law 117-216 *(Exhibit 18)* contained the recommendations from PEB 250, with additional provisions and Questions and Answers which had been negotiated between the parties prior to the tentative agreement being released for ratification. Of the recommendations included in Public Law 117-216, three provisions required further local handling/bargaining: Article V – Scheduled Days Off; Article VI – Automated Bid Scheduling; and Article VII – Pools and Extra Board.

Article V provided General Committees who desired voluntary assigned days off the ability to serve written notice to Carrier of their desire to establish such in through freight road service. The Article required General Committees, in their written notice, to specify the rules proposed and conditions, if any, that would govern the voluntary assigned days off. Upon being served notice, Carrier could respond in kind.

Article VI provided Carrier with the ability to serve a notice of intent to implement the Automated Bid Scheduling Agreement, as outlined in (a)–(d) of the Article, and identify matters it felt must be addressed with such implementation. Upon being served notice, the Organization could respond with its own list of implementation issues to be addressed.

Article VII provided Carrier with the ability to serve a notice of intent to implement some or all the items contained within the Article. Such notice was to identify any implementation matters Carrier believed must be addressed in connection with such implementation. Upon being served notice, the Organization could respond with its own list of implementation issues to be addressed.

The parties began meeting in person on a voluntary basis over Articles V-VII on January 18-19, 2023, in Las Vegas, Nevada. A second meeting was held February 28 through March 1, 2023, in Dallas, Texas. To facilitate negotiations, the Organization sent a written proposal over Article VI to Carrier on June 19, 2023 **(Exhibit 19)**. Two additional meetings were held in Dallas/Fort Worth on July 5-7 and July 12-13, 2023. Little progress was made, and no additional meetings were scheduled.

With progress stalled in voluntary negotiations, SMART-TD General Chairpersons served Carrier with written notice on December 28, 2023 **(Exhibit 20)**, of their desire to establish voluntary assigned days off, including their proposed rules and conditions for such **(Exhibit 21)**.

In response, Carrier served written notice to the Organization on January 15, 2024, of its proposed rules and conditions for Article V **(Exhibit 22)**. Carrier's notice also included its intent to implement the conditions of Articles VI and VII.

The Organization responded to Carrier's notice on Articles VI and VII on January 18, 2024, while meeting formally for the first time in Las Vegas, Nevada, with a comprehensive proposal of rules and conditions it believed needed to be addressed **(Exhibit 23)**. On February 2, 2024, Carrier Officer Powell emailed the Organization a counterproposal to Articles V through VII **(Exhibit 24)**.

The parties then met in person and again on Teams in February of 2024, with said meetings leading to the Organization providing proposed language via email which addressed Carrier's concerns on force-assigning employees and a list of metropolitan areas that needed special wage adjustment considerations **(Exhibit 25)**.

A fourth meeting was held in March 2024, with the Organization providing Carrier with a written counterproposal of voluntary rest day terms and conditions on March 7, 2024 **(Exhibit 26)**. At the same time, Carrier provided the Organization with a modified version of the Organization's provisions for force-assigning employees **(Exhibit 27)** and regulation of pool freight **(Exhibit 28)**. In both proposals, Carrier struck through or modified most of the Organization's provisions. At the close of the meeting, the parties agreed to form a subcommittee which would meet prior to the next formal meeting to explore feasible options for the full group to discuss.

The subcommittee met in Topeka, Kansas, in April 2024, and created the concept of increased access to compensated time off for all employees and the addition of uncompensated earned days off for employees in road service. Both parties were agreeable to discussing this concept at the next formal meeting. The parties' previous proposals were put on hold while this new concept was discussed and negotiated.

On May 3, 2024, the Organization provided the Carrier with a comprehensive counterproposal over Articles V-VII which reflected the subcommittee's discussions and concepts **(Exhibit 29)**. The parties formally met several days later; the subcommittee's concepts were discussed along with the Organization's most recent proposal.

On May 31, 2024, Carrier provided the Organization with a counterproposal to Articles V-VII **(Exhibit 30)**. The parties subsequently met in early June, and the Organization provided, as requested by Carrier in the previous meeting, a proposed Side Letter outlining the Automated Bid Scheduling process **(Exhibit 31)**.

On June 14, 2024, the Organization provided Carrier with a comprehensive counterproposal over Articles V-VII, with a cover letter explaining various provisions and an affirmation of the upcoming formal meeting in Dallas, Texas, on June 17-20, 2024 **(Exhibit 32)**. The Organization arrived in Dallas on June 17, 2024, for the meeting and awaited Carrier's arrival until June 20. Carrier was absent from the entire meeting and provided no written notice to the Organization of its (alleged) reason for such.

In response to Carrier's failure to attend the June 17-20 meeting, the Organization sent written correspondence **(Exhibit 33)** to Carrier Officer Parkerson on June 20, 2024, pointing out Carrier's absence and apparent abandonment of negotiations during the 180-day bargaining period.

On June 20, 2024, in written correspondence to the Organization **(Exhibit 34)**, Carrier Officer Parkerson alleged a lack of commitment from the Organization toward reaching a voluntary agreement. Officer Parkerson proffered another formal meeting, stating there were elements in the Organization's recent proposal the parties could explore. Clarification was not given on which elements Carrier wanted to pursue, nor was a counterproposal provided to the Organization.

On June 26, 2024, the Organization responded in writing **(Exhibit 35)** to Officer Parkerson, addressing the concerns contained in Carrier's June 20, 2024, letter *(Exhibit 34)*. The Organization requested a written comprehensive counterproposal from Carrier before scheduling another formal meeting. With no response or communication regarding Carrier's desire to proceed with negotiations, the Organization requested binding party-paid arbitration[1] via written letter on July 25, 2024 **(Exhibit 36)**.

PROPOSALS MADE BY THE PARTIES

The below constitutes an in-depth discussion of the proposals made by both the Organization and Carrier. As explained below, the Organization's proposals represent

[1] Public Law 117-216 mandated final and binding party-paid interest arbitration for Articles V-VII and gave either party the ability to serve notice upon the other after the 180-day bargaining period expired.

an equitable quid pro quo designed to achieve the stated goals and mandate of PEB 250 and Public Law 117-216.

The fair and equitable resolution of the current dispute over implementation of Articles V-VII of Public Law 117-216 will have a lasting and significant impact on TE&Y employees' assignments and their quality of life. Employees working in pool freight service and on extra boards are subject to call 24/7 and spend many nights away from home each year. The Organization's proposed terms and conditions for these Articles would give employees a manageable work/life balance through approved time off that is tailored to the employees' assignments, provide opportunities to observe rest outside of RSIA-regulated rest, and modernize pay provisions that have not been adjusted for decades.

The Organization's proposal would provide Carrier with operational efficiencies, a consistent supply of manpower for operations, broader use of protecting extra boards, and greater ability to attract and retain newly hired employees. The cost to provide voluntary rest days for extra boards and pool freight employees through the process in Article V of Public Law 117-216 is minimal compared to the annual savings and operational efficiencies that Carrier will obtain through that same process in in Articles VI and VII.

The Organization will show how its proposed terms and conditions comply with Articles V-VII and provide a fair and equitable agreement consistent with the recommendations of PEB 250, which acknowledged that the subjects at issue here are "inter-related."

I. The Organization's Proposals

The Organization's proposed terms and conditions for implementing Articles V-VII (*Exhibits 20* and *21*) focused on the provisions of Public Law 117-216 and Carrier's commitment in PEB 250 to negotiate an equitable agreement between the parties. As explained below, these proposals are fair, just, and appropriate.

A. ARTICLE V

The Organization's proposal (Attachment A) dated December 28, 2023 *(Exhibit 21)*, included a comprehensive approach to the rules needed to establish voluntary days off, as outlined in Article V and the Questions and Answers of Public Law 117-216 (*Exhibit 18*):

> ARTICLE V – SCHEDULED DAYS OFF
>
> 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 Notice shall specify the rules the Union proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such rules.** [2]
>
> * * * * *
>
> 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.
>
> * * * * *

[2] Emphases in all quotes have been added, unless otherwise noted.

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.[3]

A variety of voluntary work/rest schedules were included in the Organization's proposal for pools and extra boards. The Organization recognized a "one size fits all" approach for voluntary rest days would be difficult to implement across the system and would not provide all employees on the various boards with an improved quality of life and the ability to maintain earnings, the intent of the recommendations of PEB 250. Carrier responded on January 18, 2024, with proposed rules and conditions for Articles V-VII (*Exhibit 22*). A comparison of the parties' initial proposals is as follows:

SMART TD Initial Proposal	**Carrier Initial Proposal**
Pool freight service and extra boards:[4] • Voluntary 6/3, 6/2, 5/2, 4/2, 4/1, 6/2/4/2 Assigned service: • 4/3/3/4 or 3/2/2/3 Existing pool freight service that provides natural time off may remain in place along with any fatigue mitigation programs/provisions	Combine through freight service and extra boards into one board that covers both yard and road service, with mandatory days off that are TBD. Parties agree to principles for a work/rest schedule before agreeing to schedule
Ability to start compensated days early if necessary	Eliminate provisions providing compensated days to begin when called for service
Earned day off (EDO) each quarter for perfect attendance	Eliminate all provisions governing rest (extra, voluntary, or extensions) and fatigue mitigation programs
Trade turn provision	Eliminate trade turn provisions
Held-away-from-home terminal pay: • Continuous after 12 hours	Eliminate calling/starting windows in yards
Vacation: • Escalated vacation scale • Additional week of vacation	Eliminate daily preference boards in yard service

[3] An arbitration backstop was included in the PEB 250 Recommendation and Public Law 117-216 for each Article.

[4] The preferred/primary work/rest schedule for unassigned pool freight service and extra boards would be voluntary 6/3 under the initial proposal. For unassigned yard extra boards, the preferred/primary work/rest schedule would be voluntary 5/2.

SMART TD Initial Proposal	Carrier Initial Proposal
Bereavement leave: • Add family members for today's family unit • 3 days within a 30-day period from time of death	Eliminate penalty payments for being given work after a specified time period
Away-from-home meals: • Increased to $25	Eliminate yard study requirements
Differential pay: • Weekend: $50.00 per start in road service with layover • Weekend: $25.00 per start in road service without a layover • Night: $15.00 per start • Holiday in Road Service: Basic day per start	Allow Carrier to establish assignments in all service with variable start times and/or reporting points
Elimination of rate progression for new hires	Dispute committee with arbitration backstop
Overtime after 8 hours on duty for all classes of service	
Eliminate guarantee penalties for time spent in RSIA (federal rest)	
Personal leave days for all employees, regardless of class of service or tenure	
Minimum extra board staffing level (40%) for must fill assignments protected by the extra board	

The Organization's provisions would provide flexibility, voluntary days off, increased compensated time off, and would incentivize employees for working irregular hours and days. These improvements would allow employees to manage and live a normal work/life balance, maintain their earning potential and provide Carrier with a stable and consistent workforce.

After the parties' first formal meeting, Carrier provided the Organization with a second proposal dated February 7, 2024 (*Exhibit 24*), which included specific work/rest models and requested additional work rule concessions from the Organization. The Organization took Carrier's proposal under consideration and responded with a modified proposal on March 7, 2024 (*Exhibit 26*), which required employees to give advance notice of their intent to observe voluntary days off and outlined specific work/rest models for each board. A comparison of the parties' second proposals over Article V items is as follows:

SMART TD Second Proposal	Carrier Second Proposal
Voluntary 5/2 yard extra boards Voluntary 6/3 road extra boards Voluntary 6/3 through freight service[5]	Preferred model: Mandatory 11/4 Optional model: Mandatory 6/2
Rules requiring employees to provide notice if they plan to observe rest days when added to a board	Carrier may work employees into their rest days. If so used, they will begin their rest days upon return to the home terminal
Rest days will be staggered on each board to ensure availability of crews	Rest provisions in the Automatic Mark-up Interpretation are eliminated
30-day advance notice if rest days will be observed	Rest day and free day eliminated where they currently exist
	Reduce mark off time from 24 hours to 12 hours
Compressed extra board guarantee-all other guarantee provisions remain unchanged	Forfeiture of guarantee for any non-compensated layoff in a pay period.
No guarantee penalties are assessed for time spent in RSIA if employees elect not to observe rest days in a pay period	Loss of guarantee for any time spent in compensated leave status (vacation/personal leave, etc.)
	Reduction in guarantee for laying off for jury duty, bereavement leave, military leave or union business
	Pay for being in company business status reduced from lost earnings to a basic day
	No guarantee while observing rest days
	Bonus day, paid at 1/15th if any employee has no layoffs of any kind in a pay period.

Throughout negotiations, Carrier insisted on mandatory rest days with similar terms and conditions as contained in the BLET 11-4 System Agreement **(Exhibit 37)** claiming voluntary days off are impossible to implement and manage. This obstinance to the Organization's proposals for voluntary rest days was made despite Carrier's awareness of voluntary rest day agreements that other Class I carriers had successfully implemented (**Exhibits 38** and **39**).

[5] Other work/rest models were withdrawn however, a provision would remain allowing the parties to mutually agree to alternate work/rest models in the future.

1. Work/Rest Schedules

Over 90 percent of pool freight across Carrier's system is structured so that crews are called for trains at their home terminal, operate to a far terminal, obtain rest, then operate back to the home terminal. A small portion of pool freight (some shorter mileage runs) is structured so that crews are called from the home terminal, operate to a far terminal and return within the same tour of duty, then obtain rest at home (short turnaround pools). The average time it takes an employee to make a round trip on pools with a layover at a far terminal is approximately 36 hours. Once home, these pool freight employees have 12-72 hours off, depending on the length of the run, which dictates home cycle time. The longer the run, the fewer starts an employee will have in a month, while shorter runs require more starts, if extra board staffing is properly maintained to protect vacancies.

The disparity of length in pool freight service runs is why the Organization proposed several work/rest variations from which each pool could select. Thus, a short mileage run could select a work/rest variation that fits its particular requirements (4/1 or 4/2), and a long mileage run could choose likewise (by selecting 6/3 or 6/2).

Once a pool selects a work/rest model, employees in that pool would have the ability to voluntarily observe the rest days they choose. Each employee is different and no two employees have the same family or personal obligations. The ability to voluntarily select rest days would allow each employee to observe the rest days they need to meet their own obligations. If rest days are not needed, an employee simply does not provide notice to observe them, thus remaining available to provide service and reducing manpower staffing on the pool freight board.

Employees assigned to guaranteed pool freight boards that select a work rest cycle should not be penalized for voluntarily observing rest days. Carrier was aware such boards existed prior to the PEB 250 hearing and subsequent discussions leading to Public Law 117-216, and provided no objection to the application of Article V on these boards. It is disingenuous at this point for Carrier to argue that guarantee reductions must be applied when employees assigned to guaranteed pool freight boards elect to observe rest days. These employees have the same family and personal obligations as non-guaranteed pool freight employees and should not be treated differently.

The Organization's proposal would also preserve and stabilize the natural home cycle time that occurs in pool freight, unlike the BLET 11-4 System Agreement proposed by Carrier, which would eliminate the natural home cycle time of pool freight and compress work schedules into 11 days per half. Preserving the home cycle time between trips is a benefit to Carrier; it gives employees the requisite time off they are supposed to obtain and would reduce the number of employees who elect to observe voluntary rest days. Carrier's refusal to negotiate terms and conditions for voluntary work/rest schedules prevented any progress toward a voluntary work/rest model from occurring at the bargaining table.

2. Voluntary v Mandatory

As the Organization proposed rules and conditions for different versions of voluntary days off, as required in Article V of Public Law 117-216, the parties were at odds. Carrier took an unorthodox and rather ambiguous interpretation of the term "voluntary" as contained in Article V. Under Carrier's new-found interpretation of this term, an individual employee would have the option, through the exercise of seniority, to move to or from a board with mandatory rest days, thus making the rest days "voluntary." To further degrade the Article, Carrier's proposal would not apply to all boards, thus restricting an employee's access to rest days due to their seniority, or lack thereof.

The Organization adamantly opposed such interpretation throughout the bargaining process in both voluntary and formal negotiations. Article V was proposed by the Organization at PEB 250, adopted by the Board, and included in Public Law 117-216 as recommended by the PEB 250 Board. Because this Article was proposed by the Organization, the General Chairpersons requested an official interpretation from SMART TD President Ferguson who, as the lead negotiator for the Organization, led the Organization's arguments before PEB 250. President Ferguson provided a detailed explanation of the Organization's meaning and intent of Article V **(Exhibit 40)**:

> Be advised the **<u>meaning and intent of Article V is to provide all employees in unassigned road service with the opportunity to voluntarily observe two (2) or more rest days within a rolling seven (7) day period</u>.** In order to accommodate this, the **<u>employees must be given the opportunity to forgo their assigned days off at their own discretion, and they must be provided with the opportunity to change their decisions on a week-to-week basis</u>.**

President Ferguson also provided a footnote from Carrier's submission to PEB 250 (*Exhibit 8*, page 21) that demonstrated Carrier's clear understanding of the Organization's intent with Article V:

> **Making scheduled rest days optional rather than mandatory, as the Unions propose doing**, is even less feasible. It would add greater uncertainty to the mix, both for Carriers (who would have to account for yet another variable – **whether someone would exercise their right to take rest days** – when scheduling and staffing) and for employees (who would be more likely to get called to work unexpectedly if an abnormally high number of employees were to decide to take rest days). In addition, **employees would presumably be more likely to decide to take rest days** that happened to fall on weekends or holidays, exacerbating the staffing problems that Carriers already experience at those times.

While stating his position and reasoning for voluntary days off, President Ferguson explained the negative impact mandatory days off could have on an employee, especially one who is force-assigned due to low seniority. This further illustrates why the Organization sought, and successfully obtained, the right to serve notice for voluntary days off *(Exhibit 40)*:

> It is important to establish that **Article V of Public Law 117-216 and seniority are completely separate issues**. Beyond any doubt, **Union Pacific's interpretation of Article V would create an environment where employees would be forced to observe their assigned days off**. **Employees with low seniority** could be placed on, or **could even be forced to accept, unassigned road service positions with assigned days off that they do not wish to observe.**

Most importantly, the last item addressed by President Ferguson was the provisions contained within the Questions and Answers for Article V of Public Law 117-216 which prohibit an arbitrator from imposing mandatory days off if the issue resulted in interest-based arbitration *(Exhibit 40)*:

> . . . the parties drafted a tentative agreement which . . . became Public Law 117-216, included Q&A #9 to Article V, which states:

Q9. **Where agreements are reached pursuant to Article V, will observing voluntary rest days be mandatory or optional?**

A9. Where voluntary rest days are included in an agreement reached under Article V, observing these rest days will be subject to the terms of the applicable agreement. **<u>To the extent the agreement results from interest arbitration, the parties agree that Article V does not permit an arbitrator to impose mandatory days off.</u>**

As President Ferguson explained:

> . . . **there should be no question as to what the Organizations were seeking, and that the Carriers clearly understood our definition of voluntary days off**. Likewise, there should be no doubt as to the findings of PEB #250, or the parties' understanding and intent when putting those recommendations into contractual language. In any event, however, **Q&A #9 should prevent any arbitrator from imposing Union Pacific's scheme for providing so-called voluntary days off.**

As demonstrated above, the record undoubtedly supports the Organization's position regarding the application and interpretation of the term "voluntary" as contained in its proposal for voluntary days off. Carrier's refusal to acknowledge such and insist on its narrow definition of "voluntary" during negotiations greatly hampered the bargaining process. Such contradicts the Organization's good faith approach to Articles VI-VII, which is exhibited in its proposals to Carrier and the evolution of the terms and conditions contained in each proposal throughout the bargaining process (*Exhibits 20, 21, 23, 25, 26, 29, 31, 32*).

3. Additional Rest Opportunities

As to be expected with such a complex subject, the Organization deemed necessary to address/include provisions along with the implementation of work/rest schedules in its proposal for Article V. Current provisions that allow employees to observe additional rest when needed must be preserved **(Exhibit 41)**, and additional opportunities for employees to obtain rest must be adopted, as required in Public Law 117-216, Article VII(c). Two such opportunities would include Earned Days Off (EDO) and a "trade turn" provision. Together, these provisions would add a much-needed layer of flexibility to the very rigid expectations placed by Carrier upon employees in road service.

The PEB 250 Board and Public Law 117-216 recognized the demanding lifestyle of employees working in through freight service and on extra boards. Articles V-VII are designed to expand rest opportunities and increase the quality of life for employees, not restrict or eliminate their rest opportunities. Eliminating any extra rest provisions currently in place would have a tremendously negative impact on an employee's quality of life and erode gains made to quality of life considerations elsewhere. These proposed provisions ensure that employees may observe rest when they are exhausted and need time off to obtain rest.

Combined with voluntary days off, the ability to utilize earned days off (EDO) and trade turns would provide employees with the tools necessary to maintain a proper work/life balance. Should their voluntary days off occur on days they did not need to observe, they could remain available for service and utilize an EDO or trade turns with another employee to obtain the time off they need when they need it. Employees must not be penalized in any manner for the use of EDOs or for trading turns, whether through discipline under an attendance policy or financially through a reduction in guarantee.[6] Such penalties would negate the intent of both provisions and be harmful to the employee. Carrier would benefit from these provisions as employees would be encouraged and rewarded for remaining available, reducing unplanned vacancies and ensuring a stable and reliable workforce is available for operations to run without interruption.

4. Pay Elements

The addition of voluntary days off and earned days off must be accompanied with modifications to Agreement provisions which encourage Carrier to maintain proper cycle times for pool freight employees. To address these issues, the Organization proposed a reduction in the amount of time it takes a pool freight employee to initiate held-away pay at the away-from-home terminal (AFHT), an increase to the away-from-home meal allowance received by pool freight employees while at the far terminal, overtime for employees after eight (8) hours, and differential pay for employees who work weekends, nights, or holidays.

Each of these proposed provisions is directly tied to the cycle time of pool freight employees since Carrier controls call times, time spent on duty, and the time employees spend at the away-from-home terminal. When time on duty and/or at the away-from-home terminal is excessive, the employee's home time is diminished at an equal proportion, creating shorter cycle time at the home terminal. Employees' expenses for meals also increase as they spend excessive time at the away-from-

[6] Guaranteed extra boards and guaranteed pool freight boards.

home terminal, thus necessitating an increase in the away-from-home meal allowance.

Standardizing overtime after eight (8) hours would encourage Carrier to get through freight trains over the road more efficiently, thus reducing excessive on-duty times for pool freight employees. Excessive time on duty directly affects the cycle time of pool freight employees as it extends their time away from home. A pool freight employee who is on duty 8 hours each trip versus one who is on duty 12 hours each trip will experience, at minimum, eight additional hours of time at home.

The addition of differential pay would recognize and reward employees for working night shifts, weekends and holidays. Scientific studies indicate that employees who work night shifts are at high risk of experiencing adverse health effects such as cardiometabolic stress and cognitive impairments. Additionally, the rail industry operates every day of the year, requiring employees to work numerous weekends and holidays. Differential payments would be a fair system of recognizing employees who work nights, weekends and holidays.

5. Extra Boards

Two additional important items proposed by the Organization were extra board staffing and the elimination of penalties incurred by employees for time spent in Federal rest as mandated under the RSIA. When guaranteed extra boards were negotiated and implemented several decades ago, Carrier obtained the right to regulate such boards. Controlling Agreement provisions have minimum staffing standards Carrier must meet. The proper staffing of extra boards has long been disputed between the parties as Carrier has consistently staffed extra boards at the bare minimum standard in an effort to save money and reduce operational expenditure.[7]

Under current Agreements, extra boards protect all irregular service (Hours of Service, short turnaround, etc) along with vacancies in pool freight, local service and yard service.[8] When extra boards are staffed at the bare minimum standards, they directly affect pool freight and those employees' ability to obtain proper home cycle time. When the extra board is exhausted and cannot protect a vacancy in pool freight or other irregular service, the pool board is utilized to staff those vacancies. In turn, the pool board rotates faster than it is designed, causing significant disruption to estimated call times for employees working those boards. The Organization has formally opposed Carrier's inadequate staffing levels on extra boards in written correspondence to crew management services on multiple occasions (**Exhibit 42**[9]). An adjustment to the extra board staffing level as the Organization proposes would resolve this long-standing dispute and bring stability to the boards.

The extra board is akin to an insurance policy which ensures Carrier has manpower to meet operational needs. In this analogy, Carrier has historically elected to be grossly underinsured, causing harm to its operations and instability to pool freight boards. In his testimony to the STB, CEO Lance Fritz acknowledged the

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[7] See *STB Extends Employment Data Reporting for Class I Carriers*, Jan 31, 2024, https://www.stb.gov/news-communications/latest-news/pr-24-06/ (requiring Union Pacific, among other carriers, to continue to provide monthly employment data as a result of degrading customer service due to inadequate staffing levels).

[8] There are several types of combination extra boards across Union Pacific. 'XS' boards protect yard service, 'XK' and 'XT' boards protect both yard and road service, and 'XC' boards protect road service only. Each pay at a different rate that is appropriate for the service they protect.

[9] *Exhibit 42* contains examples of the written correspondence from both the Local and General Committee levels.

consequences of improperly staffed boards and how difficult it was to recover from those poor staffing decisions (Exhibit 15, pages 19-20 and 21):

> . . . the answer is we've got the hiring machine cranked up. It's hiring about 200 people a month. And at that pace we're going to head into next year and our judgment is keep it moving **because we need to get to miles, low starts, we need to register all of our boards-**
>
> * * * * *
>
> So you've pointed out a clear lesson learned which is, I've already said this, I'll say it as many times as you guys want me to say it and hear it, and that is: **we came into the year, we were too tight in some of our crew boards and it bit us, and it's taken all year to clean up. Um- that's not a lesson we need to learn twice** . . . .

Throughout the negotiation process Carrier officers repeatedly stated that self-supporting pools would allow them to reduce guaranteed extra boards by 80 percent. The savings generated to Carrier through such reductions would amount to $333,587,000 million annually **(Exhibit 43**[10]**)**. However, a minimum staffing level must be established to prevent overzealous reductions to the extra boards and prevent a future manpower crisis, as CEO Lance Fritz described, from occurring again.

This Board must consider the codependent relationship between extra boards and self-supporting pools. In addition to protecting vacancies, the extra boards will be the buffer mechanism/source of supply from which Carrier will draw, or add to, when pool freight regulation requires that additions/subtractions be made. To

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[10] Annual savings was calculated using staffing information for every guaranteed extra board across the system, reducing the total by 80 percent and multiplying by an average guarantee amount of $333,587,000 per year.

maintain a proper symbiotic relationship between the two, the minimum staffing percentages proposed by the Organization must be included.

The absence of staffing levels will lead to the same manpower shortages Carrier has repeatedly inflicted upon itself in the past, causing pool freight employees to fill in the gap and work without reprieve until Carrier is able to hire and train more employees.[11] Minimum staffing levels would provide a stable and reliable workforce, provide employees with predictable cycle times, and improve the quality of life for all employees in road service (extra boards and pool freight).

Minimum staffing requirements on guaranteed extra boards is not a new concept; these requirements have existed for several decades at locations across the UP system. While those requirements are a bare minimum, they were created to ensure extra boards would be staffed when operations exceeded manpower. The June 22, 1993, Letter of Understanding contained in **Exhibit 44** recognizes that minimum percentages will not be used to keep the extra boards artificially low, but are intended to be used for short-term employee shortages to ensure the bare minimum number of employees are retained on an extra board and not removed to fill other positions:

> The provisions set forth in Section 4 stipulate that the Carrier will maintain a minimum number of employes on the extra board; that minimum to be not less than twenty percent (20%) of the regular must fill positions protected by the extra board…**although the extra board regulating factors generally provided for sufficient number of employes to protect the service, in reality, this was only a number rather than actual employes. The obvious result was an insufficient number of available employes to meet the needs of service and fill vacancies from the extra boards.**

[11] It takes approximately six (6) months for Carrier to hire and train new TE&Y employees.

> **While this twenty percent (20%) number should provide short-term solutions to some of the problems of employe shortages**, it is not intended to be used to supersede established regulating factors for extra boards in that if the regulating factors provided for by agreement call for a number of employes in excess of the twenty percent (20%) figure, **such twenty percent (20%) figure may not be used solely to keep the extra boards artificially low.**

In addition to minimum levels, penalties on an employee's guarantee, both on extra boards and guaranteed pool freight, which are currently being imposed for time spent in Federal rest must also be eliminated. The introduction of work/rest schedules as the Organization proposed on extra boards and guaranteed pool freight will eliminate the need to impose such harsh financial penalties. Employees working on these boards will have the option to observe the voluntary rest days, which will reset their starts, or forgo such days that week and remain available for Carrier. Employees who elect to forgo their rest days should not be penalized for working or remaining available for service. Indeed, such is not only harmful to employees but also the Carrier. The same logic applies to extra board and pool freight employees' use of EDOs; these days are intended to encourage availability and reward employees for working or remaining available for work. The imposition of a financial penalty will only discourage employees from acquiring or observing an EDO. This would render the entire provision ineffective and deviate from the parties' desire to increase availability and improve employees' quality of life.

6. New Hire Retention

Union Pacific has struggled to hire and retain new TE&Y employees over the last several years. The Organization proposed several provisions that would alleviate the hiring issues at Union Pacific and improve employee retention. As mentioned previously, differential pay would have a large impact on retaining new employees. Due to their lack of seniority, new employees are often forced to work nights, weekends and holidays. Competing Class I railroads have recognized the importance of this issue to employees and provided weekend differential pay to employees *(Exhibit 39)*.

While the addition of work/rest schedules and EDOs will provide some time off for these new employees,[12] they still face a demanding on-call schedule with very little compensated time off in their first few years. This has resulted in numerous employees resigning or being dismissed for (alleged) attendance violations in their first few years of employment **(Exhibit 45)**. To address this issue, the Organization proposed a provision that would provide 11 personal leave days per year to all employees, regardless of class of service or seniority.[13] This would immediately provide new employees with desperately needed compensated time off in lieu of the qualification scale provided in the current agreement **(Exhibit 46)**, which takes two decades to complete.

Additionally, the Organization proposed an escalated vacation scale so new employees would obtain their fourth and fifth week of vacation earlier, along with an additional week of vacation which would benefit them in the future and benefit current long-term employees. Carrier's attendance policy **(Exhibit 47)** is extremely punitive

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[12] A new hire's seniority, or lack thereof, may prevent them from working an assignment with a work/rest schedule and/or EDO's.

[13] Current agreements provide 2 PL days to employees with less than 5 years; 4 PL days to employees with less than 10 years; 6 PL days to employees with less than 15 years; 8 PL days to employees with less than 20 years; and 11 PL days to employees with 20 years or more.

toward employees who take non-compensated time off. This has prompted the need for employees, especially newer employees with families who have limited compensated time off, additional compensated time to utilize for personal use and/or attending family functions and care.

The Organization's proposals also recognized the need to address when pre-scheduled/pre-approved time off would begin, as this will affect any work/rest schedule. Under the Organization's proposal, any pre-scheduled/pre-approved personal leave days (both weekly and single) would begin at 9:00 AM and end at 8:59 AM on the following day.[14] Immediately before the pre-scheduled/pre-approved day is to begin (from 12:01 AM to 9:00 AM), employees called or scheduled to protect service would be placed in a "PRE" status, ensuring that they could observe the scheduled day(s) off. Under current Agreements, employees schedule compensated days to attend important family functions, doctor appointments, etc, but are unable to do so if they are called for service hours or minutes before their compensated time off begins.

Bereavement leave is separate from compensated time off and has not been modified to fit today's family unit; this issue is very important to current and new hire employees. Carrier has implemented a modernized policy for management personnel **(Exhibit 48)** but has not done so for TE&Y employees. This is extremely harmful for newer employees as their seniority only provides a limited number of compensated days off. These employees must lay off non-compensated and face potential discipline under Carrier's attendance policy if they wish to attend the funeral

[14] This time coincides with the Organization's time for awarding assignments, as contained in its January 18, 2024, proposal *(Exhibit 12)*.

of a family member who is not listed under current bereavement leave provisions **(Exhibit 49)**.

The elimination of rate progression scales for new hires would make a career with Carrier more appealing to new candidates and directly affect the retention of those employees. There are some territories, primarily in the southern portion of the system, where these scales have already been eliminated by Agreements. At those locations, Carrier's success at hiring and retaining employees is much greater than at locations where rate progression scales still exist. This was confirmed by Eric Gehringer, Chief Operation Officer for Union Pacific during the STB Embargo hearing on December 13, 2022 *(Exhibit 15*, page 9*)*:

> *** Now as that demand continued to grow it did outpace our ability in some particular hubs. Those hubs are the same ones that we've been very consistent about, including when I was here in April, which is those are **the rural communities that we have found it particularly difficult to hire in. Specifically, in the case of coal, it's North Platte, Nebraska and the surrounding area.** *** **So, I'm hiring in North Platte, I'm not being as successful as we otherwise would prefer. So, I'm taking somebody from Houston as they get a new hire, they fill a role.** I take somebody else and I say, let me- let me make your borrow out up in North Platte. ***

Carrier's ability to hire and retain employees is vital to its success, to meet current operational demands, and adapt to future business growth, which is a common interest between the Organization and the Carrier. The Organization's proposals would modernize TE&Y assignments and make them more appealing to the next generation, who value flexibility and a balanced work/life career.

B. ARTICLES VI and VII

Article VI of the Public Law granted Carrier the ability to serve notice to implement the Automated Bid Scheduling (ABS) process, as outlined in (a)–(d), and any implementation matters it believes must be addressed in connection with such implementation. Public Law 117-216 allows the Organization to respond with its own list of matters/issues it believes must be addressed in connection with such implementation. The basic outline of provisions contained in Article VI are straightforward and limited in scope. They are as follows:

1. An electronic Automated Bid Scheduling system that would serve as the primary method to assign employees on a regular basis;
2. Bidding and awarding of assignments electronically;
3. Weekly vacations commencing and ending at a designated date and time (begin at 12:01 a.m. and end at 11:59 p.m. unless otherwise authorized); and
4. Employees scheduled to be off for weekly vacation will not have their Automated Bid processed, nor be awarded an assignment.

The Agreement provisions for daily preference, bulletining of new assignments, re-bulletining of yard and road assignments, pass-up rules, turn removal, hold-downs, AWTS/Buffer Boards, and displacement time remained intact and unchanged as they were not included in Article VI(a)–(d). The automation of bid scheduling as contained in Article VI only changed the process Carrier would utilize for posting and awarding assignments, modernizing the process to an electronic system rather than an antiquated system which requires significant resources to operate and execute. Any Agreement provisions Carrier desires to modify in addition to those listed in

Article VI cannot be imposed by a tribunal but must be mutually agreed upon as they were not included in PEB 250 or Public Law 117-216.

Article VII granted Carrier the ability to serve notice to implement some or all the items contained there, as well as specific implementation matters the Carrier believes must be addressed in connection with such implementation. The Organization may respond with its own list of matters/issues it believes must be addressed in connection with such implementation. The basic outline of provisions contained in Article VII is also straightforward and limited in scope. They are as follows:

1. Self-supporting pools. Pools will protect vacancies within the pool and operate on a first in/first out basis (unless otherwise agreed to by the parties);
2. Pool regulation will be based on a target number of starts, taking the length of run into consideration;
3. There will be a predetermined period during which the number of starts is tabulated which will include a predetermined period for predicting the future number of starts utilizing technology;
4. Process for automatic pool adjustment to ensure consistency with the requirements of RSIA, availability and fatigue abatement;
5. Pools operate on a first in/first out basis; and
6. Carrier may abolish or establish road, yard or combination guaranteed extra boards and be regulated by Carrier based on needs of service.

Section (c) of Article VII requires that in conjunction with the items listed in (a) and (b) of Article VII (listed above), any new Agreement will provide the following:

1. Opportunity for employees to observe rest outside the requirements of RSIA;
2. A procedure for employees to trade assignments; and

3. A procedure under which employees may receive a pre-arranged layoff.

While a voluntary agreement grants the parties broad latitude to include provisions not contained in Articles V-VII through mutual agreement, there are still certain provisions we cannot disregard or omit, such as Article VII(c), above. Binding arbitration is considerably different than a voluntary agreement, as the Neutral must be cognizant of the guardrails contained within the Public Law and ensure provisions for each Article limited to those that are necessary for the successful implementation of each Article and will provide an equitable quid pro quo between the parties. Many of these guardrails are contained in Questions and Answers for each respective Article *(Exhibit 18)*:

<u>ARTICLE VI – AUTOMATED BID SCHEDULING</u>

Q1. If the **Carrier elects to serve Notice** to the Union of its desire to establish automated bid scheduling rules, **is their Notice limited to the items specifically listed in Article VI, or may they serve Notice on other work rules?**

A1. **The Carrier may serve a Notice to implement the Automated Bid Scheduling agreement described in (a) – (d) of Article VI as limited in Side Letter #5**, and, in doing so, may identify any Carrier specific implementation matters that it **believes** must be addressed in connection with such implementation. However, t**here is nothing that precludes the parties from bargaining over additional work rules, provided that there is <u>mutual agreement</u> to do so.**

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Q11. Is the intent of Article VI to eliminate extra boards?

A11. No.

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ARTICLE VII – POOLS AND EXTRA BOARD

Q1. **If the Carrier elects to serve Notice** to the Union of its desire to implement pool and extra board rules, **is their Notice limited to the items specifically listed in Article VII, or may they serve Notice on other work rules?**

A1. **The Carrier may serve a Notice of its intent to implement some or all of the items listed in Article VII, except as limited by Side Letter #5,** and, in doing so, may identify any Carrier-specific **implementation** matters that it believes must be addressed in connection with such implementation. **However, there is nothing that precludes the parties from bargaining over additional work rules, provided that there is mutual agreement to do so.**

Q2. **Where a self-supporting pool is implemented** pursuant to **Article** VII, **will Employees on those assignments be expected to protect assignments outside of that self-supporting pool?**

A2. **No, except** in the normal course of vacancy procedures/running calling decisions, **as authorized by existing agreements, or by mutual agreement.**

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Q15. Is the intent of Article VII to create multi-directional pools?

A15. No.

The Organization took considerable care when drafting its proposals to ensure each proposed provision was within the guardrails contained in Public Law 117-216 and would satisfy the intent of the PEB Recommendation. The Organization's January 18, 2024, proposal *(Exhibit 23)* contained provisions allowing for self-supporting pools, regulation of pools using starts versus mileage, an electronic bid system, extra board supplementation, and improvements to certification allowances, temporary lodging, cost-of-living adjustments for metropolitan areas, increases to supervision of trainee pay, fireman- and hostler-in-training pay increases, and retention of the Automatic Mark-up Interpretation dated March 7, 2005 **(Exhibit 50)**. The Organization's position and rationale for each of these factors is explained below.

1. Self-Supporting Pools

Regarding self-supporting pools, the Organization's proposed terms would allow for pool freight vacancies to be protected within the pool and would further ensure employees were not deprived of earnings they receive today. Public Law 117-216 only requires the parties to establish terms and conditions for pool freight vacancies to be protected from within the pool – it does not grant the inclusion of irregular service (Hours of Service relief, short turnarounds, etc) that is performed by protecting extra boards.

The use of pool freight employees to protect irregular service would only degrade home cycle time in pool freight and make call times very unpredictable, as the need for such irregular service is highly sporadic. A simple event such as an unforeseen weather event (such as flash flooding) or a mechanical failure between terminals causes an immediate and high need for Hours of Service relief. A pool could easily be depleted in a matter of hours, leaving it without manpower to operate through freight trains. This is why irregular service must be protected by the extra board and why minimum staffing levels on the extra boards must be established and maintained.

The self-supporting portion of the Organization's original proposal also retained the payment employees at many locations across the system today currently receive for protecting pool freight vacancies when the extra board is exhausted **(Exhibit 51)**. Article VII(a) did not eliminate payments employees receive for working off their turn and protecting another assignment in pool freight, irregular service, or any other service. It is reasonable to extend this provision to all pool freight employees as they will now be required to protect vacancies within their pools, which were previously protected by the extra board. This would satisfy a portion of the equity to which they are entitled and is monetarily insignificant to the Carrier, especially when compared to what Carrier will gain financially through the implementation of self-supporting pools.

2. Pool Regulation

The regulation of pool freight evolved through the formal bargaining process and was one item the parties were generally able to agree upon. The Organization's original proposal was intentionally presented in a simplified manner as there was much discussion needed before an agreement could be reached. The bargaining resulted in the items contained in Article IV of the Organization's final proposal dated June 14, 2024 *(Exhibit 32)*. This method of regulation takes into account run length, past starts, and a look-ahead factor for upcoming known vacancies, as they pertain to that proposal. The method of regulating starts would need minor adjustments to reflect the Board's final decision, to account for voluntary days off which the pool freight employees may elect to observe.

The look-ahead factor is very important within a self-supporting pool. This factor ensures that board staffing is accurately maintained to account for upcoming vacancies, and that adequate manpower is maintained on the pool freight board to ensure no disruption occurs to proper/natural home cycle time. Disruption of the home cycle time results in less time at home and more erratic work schedules for pool freight employees, a clear decrease in quality of life for these employees, which runs counter to the provisions of Public Law 117-216.

3. Permanent Bid System

Article III of the Organization's January 18, 2024, proposal *(Exhibit 23)* contained the terms and conditions for bulletining/bidding/awarding assignments, seniority moves (voluntary and forced), and displacements. The proposal provided Carrier with a streamlined process for assigning jobs electronically, reduction to displacements, and a standardized process for bulletining/bidding/awarding assignments across the entire system.

Although the parties agreed on many aspects of the Organization's proposal, Carrier expressed concern over the timeline to implement such changes, claiming software does not exist for a program which could complete these processes. Carrier requested an open-ended timeline for developing the necessary software. The Organization took Carrier's concern into consideration and, along with some other minor modifications, and added a 24-month timeframe for software development in its June 14, 2024, proposal *(Exhibit 32*, Side letter #1*)*.

In association with seniority moves, the parties agreed to address the forcing of employees to outlying assignments or locations and providing those employees with temporary lodging. Employees most affected are those with little seniority and tenure who have limited resources and, once notified of being forced, are given limited time to report to the outlying point. They are not provided lodging, meal allowances, or transportation reimbursement.[15] Without the resources to support both a temporary residence and their home residence, this hardship has caused employees to live in their cars or in tents at the outlying point. In several instances employees elect to resign rather than be forced to an outlying point. When this occurs, Carrier must again initiate the lengthy hiring and training process, while in the meantime relying on the remaining workforce to work extra shifts until replacements are qualified and marked up for service.

Carrier recognized the significance of issues brought forth and was willing to address same in formal bargaining. Side Letter #1, E. 4, of *Exhibit 32* reflects the discussions and contains what the Organization deems as a necessary remedy to this long-standing issue. The implementation of self-supporting pools and potential reductions to extra boards will result in considerable movement of employees across the system. The importance of this provision is significant as it will provide adequate time for employees to report and a level of financial security to those displaced or forced to outlying locations.[16]

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[15] There is no system Agreement in place providing for all of these provisions. A few territories across the system provide lodging on a limited basis per year to employees forced from their home location.

[16] Most employees forced to an outlying location do not move their residence to the new location as they are normally released after a few weeks or months. While at the outlying point, they must pay their own housing costs, in addition to their residence at the home terminal.

4. Extra Boad Supplementation and Pay

Article IV of the Organization's January 18, 2024, proposal *(Exhibit 23)* contained the terms and conditions for filling vacancies when the extra boards were exhausted. Public Law 117-216 did not allow the Carrier to modify/nullify the numerous Agreements governing delineation between yard and road service **(Exhibit 52)**. The Organization proposed an avenue for the Carrier to utilize yard boards to protect road service, and vice versa, in exchange for compensation to the affected employee(s). The proposal also provided employees who desire extra work to be utilized in a quicker manner. This proposed provision provided Carrier with greater flexibility, an expedited process for filling vacancies and assignments, and a stable workforce when anomalies occur and extra boards are exhausted.

Lastly, under current provisions, penalty and arbitrary payments are used to offset guarantee on extra boards and guaranteed pool freight. Using these payments to offset guarantee provides no deterrent for avoiding a violation but encourages such behavior from Carrier, as most penalty payments offset the employee's guarantee. This practice dissuades employees from filing a grievance and mitigates any future financial liabilities Carrier would incur for Agreement violations. Elimination of these provisions, as the Organization has proposed, would preserve and strengthen the dispute resolution process.

5. Training Pay and Allowances

The proposed modification to the certification allowance is tied directly to the starts employees accumulate in pool freight and on protecting extra boards. The conversion of pool freight regulation from mileage to starts necessitates the need to adjust the certification allowance, as both are based upon the starts of an individual employee. This rate has not been adjusted since it was established in 1997 **(Exhibit 53)**. An adjustment would be appropriate as the duties/responsibilities of TE&Y employees have greatly increased over the last several years.

The cost of living in metropolitan areas has prevented Carrier from hiring and retaining new personnel at certain locations, especially in recent years as the cost-of-living index in certain locations has outpaced other parts of the country. The Organization proposed an annual adjustment for employees living in these areas to provide a livable wage and ease Carrier's hiring difficulties. The parties discussed and explored the possibility of providing this adjustment, similar to the process Carrier has in place for management personnel. At Carrier's request, the Organization composed a list of proposed metropolitan areas to include in the provision *(Exhibit 25)*. Unfortunately, as negotiations progressed, this item was among those which Carrier ceased to discuss.

An increase to the supervision of trainee allowances and firemen and hostler training pay would also enhance Carrier's ability to train and retain employees. The trainee allowance and expectations of the employee providing the training are not standardized across the system. Employees who instruct new hires are paid a fixed rate of $8.00 at some locations, and $49.07 (subject to GWI) at others **(Exhibit 54)**. An increase in this allowance, and a standardization of expectations for those providing training, will improve the training process for new employees, resulting in employees who are more capable, confident, and productive in their job.

The proposed increase to firemen- and hostler-in-training pay was presented to rectify the decreased earnings employees receive when they are awarded a "promotion" to engineer and placed into the training program. Many senior employees with considerable operational experience refuse to bid on engineer promotions due to the low wages they would receive while training **(Exhibit 55)**. As a result, junior employees with little to no operational experience are forced to engine service and deprived of the opportunity to learn the industry prior to operating a locomotive. Frequently, new employees simply resign as they are not comfortable operating a locomotive without any experience, or they cannot afford the reduction of earnings and seek greater earning potential elsewhere. When these employees resign, staffing levels are impacted and the quality of life of those remaining is degraded until, once again, more employees are hired and trained.

6. Automatic Mark-Up Interpretation

The final item in the Organization's proposals is a provision which preserves the Automatic Mark-up Interpretation dated March 7, 2005 *(Exhibit 50)*, and ensures it remains intact and unaffected. Being very similar to the issue currently before the Board, Carrier obtained the ability in Article VII of the 2002 National Agreement to propose implementation of a rule for the automatic mark-up of employees for service after the expiration of any period of authorized or approved time off. Carrier proposed implementation of the rule and negotiated the Interpretation with the Organization.

The Automatic Mark-up Interpretation applies to Carrier's entire system and is an example of the parties working together to address concerns from each side. Carrier obtained the automatic mark-up provisions it was seeking and did not seek to negate or modify rule provisions not directly tied to the issue. The Organization protected employees' earnings on guaranteed boards, prohibited the extension of a layoff from being compounded against an employee's record, preserved extra rest provisions, and ensured that employees (or their immediate family member) who were extremely ill or hospitalized would receive consideration prior to being subjected to discipline.

The parties put considerable thought into the Automatic Mark-up Interpretation and its effect on an employee's ability to obtain rest, as well as mitigation of fatigue-related issues. Provisions were based upon existing scientific data, and the parties worked collaboratively to improve the quality of life for TE&Y employees.

One such example is contained in Article II, Section E of the Interpretation. Under this provision, employees on an authorized absence of 72 hours or greater are not called for assignments that start prior to 8:00 AM if their absence expires between 10:31 PM and 7:59 AM This allows those employees to obtain proper rest following the expiration of their compensated time off instead of being immediately called to work a night shift. This is an extremely valuable tool for fatigue mitigation and one of the many reasons the Organization seeks to preserve the Interpretation in its entirety.

II. CARRIER'S PROPOSALS

Carrier's proposals were reflective of its opposition to voluntary rest days and its desire to establish mandatory rest days in an 11-4 model (11 workdays followed by 4 mandatory days off). These proposals would create an open-ended timeline for developing an automated bid system and result in the elimination of work rules, calling procedures and seniority moves, rest opportunities outside of RSIA, and numerous Agreement provisions governing yard service. These proposals would also eliminate the delineation between yard and road service and grant Carrier the ability to combine through freight service with protecting extra boards, with full rights to regulation of all boards.

Several of the provisions proposed by Carrier were not open to discussion under Articles V-VII of Public Law 117-216. These items include the following:

1. Combination of pool freight service boards and extra boards;
2. Incorporating irregular service into pool freight service;
3. Sole right to regulate all boards;
4. Elimination of agreements providing for calling/starting windows, including yard protecting extra boards;
5. Elimination of agreements providing for daily preference or daily mark-up in yard service;
6. Elimination of applicable agreements providing for penalty payments when new work is given when working after a certain period of time;
7. Ability to establish assignments in road and/or yard service with variable start times and/or reporting points;
8. Elimination of any agreement requirements, if applicable, to conduct a yard study;
9. Elimination of any existing agreement provisions providing an employee with the ability to extend rest, elect additional rest, take voluntary rest, or any other fatigue mitigation programs;
10. Elimination of trade turn provisions;
11. Elimination of compensated days beginning when an employee is called to work (next stand for work);
12. Reduction in bulletin time for new assignments;
13. Reduction in bump time;
14. Elimination of temping vacancies;
15. Modification to the process for notifying employees they are displaced (reduced to one attempt);
16. Creation of a buffer board (AWTS – Part-time work board);

17. Reduction to recall time for furloughed employees;
18. Elimination of displacement time;
19. Standardization of make whole payments; and
20. Creation of a disputes committee to resolve issues with the agreement.

The many changes, modifications, and concessions sought by Carrier in its proposals, which were outside of the provisions contained in Public Law 117-216, were a direct reflection of the 11-4 System Agreement Carrier has in place with the BLET for engineers, dated August 16, 2023 *(Exhibit 37)*. This Agreement provided engineers with an 11-4 work schedule (11 workdays followed by 4 mandatory rest days) in exchange for countless work rule concessions and a guarantee laced with strict forfeiture rules.

A. BLET 11-4 SYSTEM AGREEMENT

The 11-4 System Agreement was operated as a pilot between Kansas City and Coffeyville, Kansas, prior to ratification of the BLET's National Agreement. The Pilot Agreement **(Exhibit 56)** was signed by the parties on September 27, 2022, only one month after the PEB's recommendation was released and two months before the BLET National Agreement **(Exhibit 57)** was signed. The terms and conditions of the Pilot Agreement were carried over into the 11-4 System Agreement with only minor modifications.

The PEB Recommendation and Public Law 117-216 laid out before the parties a roadmap upon which Articles V-VII must be navigated and negotiated. That roadmap ensures both parties will obtain the general provisions that each sought, and an equitable quid pro quo be attained between the parties. Considering the complexity surrounding the terms and conditions needed to successfully negotiate an agreement for Articles V-VII, and the timeline outlined above for the BLET Pilot Agreement, it was impossible for Carrier and BLET to negotiate the terms of that Agreement within the PEB's intent.

B. THE CARRIER'S ARTICLE V PROPOSALS

In contrast to the Organization's proposals for voluntary days off in through freight service and on extra boards, Carrier's proposals were focused strictly on obtaining operational efficiencies that were not included in Public Law 117-216, and disregard improving the quality of life for TE&Y employees.

1. Work/Rest Schedules

Carrier's proposed work/rest schedule is reliant upon the combination of pool freight boards and extra boards and consists of a mandatory 11/4 (11 workdays followed by 4 mandatory rest days) as the preferred model, and a mandatory 6/2 (6 workdays followed by 2 mandatory rest days) as the optional model. This model compresses the work on the newly created board, forcing employees to obtain their starts back-to-back and thus eliminating the natural time off pool freight boards receive between trips/starts under current Agreements.

Maintaining the proper cycle time of pool turns is critical to pool freight boards. Such a cycle would allow time for employees to handle personal business, obtain rest, and spend time with family between trips.[17] Currently, conductors in pool freight are only utilized to work from point A to point B. Once called for a run, these conductors can estimate, within a few hours, when they will return home.[18] Under Carrier's proposal to combine pool freight with extra boards, employees could be called for in-town work (Hours of Service relief, short turnaround service, yard service, etc), for a run from point A to point B, or for a run from point A to point C. This leaves the employee with no ability to estimate the duration of time they will be away from home or where their work will take them.

This problem would be even more prevalent in areas where "long" pools would be combined with extra boards. Employees in long pools are provided two to three days between trips when regulation is properly maintained and extra boards are adequately staffed.[19] Employees working in "short" pools must work more starts per half to make the mileage equivalent of their counterparts in the long pools. Mandatory days off for these employees would make their lives difficult; they would work back-to-back for 11 days and be forced to observe days off when they may not need or want them. This rigid system would be more costly to Carrier and, while providing time off, would not provide any flexibility for employees to obtain time off when needed. In comparison, the Organization's proposal would provide flexibility

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[17] Pool freight is regulated on miles each month. The mileage regulation contains a range within which all pool freight must be regulated and ensures all runs, regardless of length, are regulated at the same number. Small mileage runs accumulate more trips (10-12 round trips per month) versus longer mileage runs (6½ - 7½ round trips per month). The regulation provides natural time off between trips, provided proper extra board staffing is maintained to cover vacancies within the pool.

[18] Engineers and Conductors, on average, return home from a round trip within 36 hours of on-duty time at the home terminal.

[19] Inadequate staffing of extra boards was prevalent across the system throughout 2020-2023, as confirmed in testimony by Carrier executives before the STB. This led to pool freight employees working well beyond the mileage thresholds and having very little time at home.

and give employees the option to observe days off when they need them, while also providing a consistent source of manpower to run Carrier's operations.

The blueprinting of boards contributes to an employee's time at home as it ensures the board rotates in a consistent and predictable fashion.[20] Carrier's desire to combine boards and eliminate the blueprint will make it extremely difficult for employees to predict when they will be called for work, where they will be called to, and when they will be home next.

2. Financial Penalties

The penalties proposed by Carrier for the newly created guaranteed boards are unrealistic and harsh. Employees working under this method will face a substantial financial penalty if they take any non-compensated time off; a single non-compensated layoff would forfeit guarantee for the entire pay period. The current forfeiture rules on guaranteed boards across Carrier's system allow employees to lay off a set number of times for a set number of hours without forfeiture of guarantee **(Exhibit 58)**.[21] Currently employees have a prorated amount (1/15th) deducted from their guarantee for each 24-hour period of unavailability.

Those who take compensated time off under Carrier's proposed system will also be penalized financially since their guarantee would be reduced for each *compensated*

[20] Blueprint boards set an established order to a pool freight board. If a pool freight employee is called out of order from their home terminal, they will be restored to their proper order upon arrival at the far terminal, or at the home terminal, depending on location. Pool freight employees rely on this blueprint in order to estimate when they will be called for service.

[21] Forfeiture rules vary across the system from one occurrence not exceeding 24 hours to unlimited occurrences.

day that is observed.[22] This would result in employees not taking time off when they need it for rest or to attend family functions, thus making them subservient to Carrier for each 11-day work cycle. These unrealistic forfeiture rules will negatively affect employee's earnings, mindset and physical well-being, all of which are key components to their quality of life.

Carrier's proposed forfeiture rules also penalize employees for taking time off for union business, bereavement, military service, or family medical leave. A layoff for any of these legitimate reasons would result in forfeiture of guarantee instead of a prorated daily deduction for each 24-hour period (as is done currently). Employees should not be penalized in such a manner for serving their country, representing their membership, mourning a loved one, or utilizing time off under FMLA. Carrier's approach to guarantee does not treat employees as people, but as machines. Unfortunately, things happen in life, and workers should not lose a significant portion of their income due to a car accident on the way to work or because they must take a loved one to a doctor's appointment. Simply put, a balance must exist to account for unforeseen – and unavoidable – life events.

C. THE CARRIER'S ARTICLE VI & VII PROPOSALS

In its proposals, Carrier seeks multiple concessions which would result in the elimination of multiple work rules in road and yard service, as well as an open-ended timeline for developing an automated bid system. Several of Carrier's requests were

[22] Carrier will deduct a prorated daily rate at 1/11th from an employee's guarantee and replace it with the earnings from the compensated day. The difference varies as vacation and personal leave days are compensated at different rates. On average, employees lose 4k-7k per year taking compensated time off.

not items/provisions it obtained, nor was it granted the ability to negotiate for such in Articles V-VII of Public Law 117-216.

<u>1. Combining Pool Freight and Extra Boards – Irregular Service</u>

One of Carrier's largest deviations from Public Law 117-216 was its proposal to combine pool freight boards with extra boards.[23] This would eliminate pool freight boards and require employees on the newly combined board to protect Hours of Service relief, local service, work train service, transfer service, short turnaround service, yard service, and opposing freight runs, in addition to the run the board is primarily designated to protect. The addition of this work, which is not static but irregular, degrades call time predictability and home cycle time.

In addition to the corresponding Questions and Answers in I, B, above, Article VI(a)(2), (c)(3) and Article VII(a) of Public Law 117-216 require pool freight to remain independent of extra boards *(Exhibit 18)*:

<u>ARTICLE VI – AUTOMATED BID SCHEDULING</u>

(a) (2) **<u>Carriers will maintain a system</u> containing all employees' assignments, including pools <u>and</u> extra boards**, which will be updated as necessary. Employees may update their assignment preferences at the designated time. New assignments will be bulletined or posted.

* * * * *

[23] Articles V-VII did not give Carrier the ability to combine extra boards and pools or bargain for such. This was, nevertheless, accomplished in the 11/4 System Agreement through mutual agreement between BLET and Carrier.

(c) (3) Employees newly assigned to an **extra board <u>or</u> pool freight service** will be placed at the bottom of the board/pool at the start of a new assignment or when they return to their home terminal in accordance with their tie- up time. If two or more employees have the same tie- up time, they will be placed on the board in accordance with their last on-duty time.

<u>ARTICLE VII – POOLS AND EXTRA BOARD</u>

(a) Self- supporting pools

(1) **Pools will be converted to a system under which <u>pool vacancies are primarily protected within that pool</u>**.

(2) **Pools will operate** on a first in/first out basis unless otherwise agreed to by a carrier and labor organization.

Public Law 117-216 only granted Carrier the ability to negotiate terms and conditions for pool vacancies to be protected within the pool. It did not give Carrier the unilateral right to negotiate or expand the assignments or classes of service that pools may protect. Such could only be considered by mutual agreement of the parties. Here, the Organization does not agree because the introduction of irregular service into a pool board only disrupts and diminishes the home cycle time of pool turns along with diminished earnings for employees called for such additional service.[24]

Furthermore, Public Law 117-216 did not modify or abrogate the current Collective Bargaining Agreements governing pool freight service, or the work that extra boards are required to protect across the various SMART TD General

[24] Earnings from irregular service are less than earnings of a round trip in pool freight. Under Carrier's proposals, employees would be required to work additional trips/starts to make up the difference.

Committees **(Exhibit 59)**. Those Agreements have been in place for decades and were not an item Carrier sought to eliminate before PEB 250, nor was it a provision granted under Articles V-VII of Public Law 117-216.[25] The process for establishing or modifying pool freight operations remains intact as contained in Article IX of the 1985 National Agreement **(Exhibit 60)**.

As reference, the following examples exhibit the common language contained throughout the system pertaining to the process Carrier must follow for modifications to pool freight and, more importantly, the work extra boards are required to protect *(Exhibit 59)*:

<u>Pool Freight Modifications:</u>

Roseville Hub
Merger Implementing Agreement dated February 25, 1998
<u>Article III, Section L</u>

New pool operations not covered in this Implementing Agreement within the Hub or between Hubs or this Hub and a non merged area **will be handled per Article IX of the October 31, 1985 National Agreement.**

<u>Extra Board Protection:</u>

Pacific Northwest
1989 First District Crew Consist Agreement
<u>Article IX, Section 2</u>

(a) **<u>Extra Boards will protect vacancies in pool, yard, and assigned service</u>** in accordance with the Work Rules Agreement effective October 1, 1975. (See Side Letter #23)

[25] Article VII only modified the way in which pool freight vacancies would be protected and pool freight boards be regulated.

(b) **Extra work in unassigned short turnaround service, irregular branch line service, turnaround service, unassigned branch line service, unassigned work train service, short straightaway service, relief service and other unclassified services, which are not to be operated through from one to another through freight terminal on protecting Extra Boards at the point where the service originates.**

1972 Interdivisional Agreement – Part VII
Extra Boards

Section 1. **Irregular and unassigned non-interdivisional service, including dog-catching, shall be protected and manned by extra employes from the seniority district over which such service operates.**

Section 2. Vacancies in interdivisional service occurring at the far terminal of the turn will be protected and manned by extra employes from the home terminal of the turn. If such extra employes cannot be made available at calling time of such turn at the far terminal the vacancy will be protected and manned in accordance with the provisions of the supplemental agreement dated October 7, 1970 entitled "Brakemen Used Off Assignment": and in that event, the extra employe called from the home terminal will protect the resulting vacancies for which such extra employes are available at the far terminal.

Section 3. **Dog-catching in interdivisional service in territories having two home terminals shall be protected and manned by extra employes** from the seniority district over which such service operates.

As the Carrier was not given the right to seek the combination of freight pool and extra boards, its proposals with respect to this issue should be rejected, and the longstanding existing agreements governing such should remain in place.

2. Combination of Extra Boards

The Carrier's proposal of January 15, 2024 *(Exhibit 22)* included a provision which would allow for the establishment, abolishment, or combination of road/yard extra boards and/or supplemental boards. Public Law 117-216 does not allow for the combination of extra boards and/or supplemental boards, just the establishment or abolishment of such. Granting Carrier the ability to combine extra boards would be beyond what Public Law 117-216 allows in Article VII(b)(6), which reads as follows *(Exhibit 18)*:

> The carrier may **abolish or establish** road, yard or combination extra boards which will be regulated by the carrier based on the needs of service.

The Organization was willing to discuss locations across the system where a combination of boards could safely be achieved, and did so with the hope of moving negotiations forward. These talks ceased as negotiations progressed when Carrier refused to address any of the Organization's proposals or concerns toward equity in the Agreement. Carrier was also opposed to the Organization's position over former T&P and IGN properties, which are protected from any modifications unless such are mutually agreed upon. A detailed explanation of the Organization's argument over these properties is contained in **Appendix A**.

3. Elimination of Demarcation Between Yard and Road Service

Carrier's proposal to combine pool freight boards with extra boards included eliminating the delineation between yard service and road service. The demarcation between yard and road service is not an item contained in Articles V-VII of Public

Law 117-216. The separation of yard and road service has existed for many decades and was left unchanged/untouched by Public Law 117-216. Examples of these agreements across the General Committees are attached hereto as **Exhibit 61**, with one such example quoted below:

> 1956 Dual Rights Agreement – Section 5
>
> a) Upon establishment of dual seniority in road and yard service, **employes working in road service may transfer in the exercise of seniority to yard service**, and vice versa, and exercise seniority in the service to which they elect to transfer subject to the condition that they make written application to the Superintendent, and providing their seniority will permit, them to work in the service to which transferred. Such transfer shall be made effective when the extra board covering the yard or road district is increased, or as soon thereafter as a replacement employe is available at the point at which the applicant is working.
>
> b) Any employe exercising such right will be required to remain in the service to which transferring for a period of four months unless reduced to the extra board.
>
> c) In the application of Sections 5(a) and (b), it is understood that any employe holding prior rights in **either road or yard service may exercise rights in the opposite service** in event his seniority will not allow him to work in the service where prior rights are held. Such employe will be permitted to return to his prior right service at the first opportunity.
>
> d) **Employes in yard service and employes in road service will be subject to the provisions of the individual yard and road agreements when working in that particular service.**

As Public Law 117-216 made no mention of this topic, the decades-long practice and existing agreements governing such should remain in place.

4. Regulation

Carrier's desire to gain full control of board regulation is without merit and was not a right granted by Article VII of Public Law 117-216. In its submission to PEB 250, Carrier only sought a transition from mutual regulation of pool freight using mileage, to mutual regulation of pool freight using agreed-upon start targets *(Exhibit 8*, pages 34-37*)*. Article VII provided the avenue for the parties to mutually agree upon a proper start target number for each pool, taking the length of the pool into consideration. Anything beyond mutual regulation of a pool using start targets would be improper and outside the purview of Public Law 117-216.

Through the formal bargaining process the parties were able to agree upon start targets using a table which converted different mileage variations to starts. The provision for the mutual regulation of pool freight service is found in Article IV of the Organization's proposal dated June 14, 2024 *(Exhibit 32)*.

5. Elimination of Rest Outside of RSIA Requirements

PEB 250 and Public Law 117-216 recognized the importance of obtaining/ managing additional rest and trading turns, and mandated the parties negotiate such into the Agreement, as per Article VII(c)(1):

> (c) Workforce predictability and flexibility
>
> (1) In conjunction with adoption of the above listed in Paragraph A and/or Paragraph B above, **new agreements will provide for one or more of the following:**
>
> **(a) Opportunity for employees to observe rest outside the requirements of the Rail Safety Improvement Act**

(b) A procedure under which employees may trade assignments

(c) A procedure under which employees may receive a pre-arranged layoff

Carrier's proposal disregarded the requirements of Article VII and would eliminate any/all Agreement provisions providing rest outside of RSIA and the trading of assignments. The provisions the Organization proposed would satisfy the requirements of Article VII and allow employees to schedule prearranged days in advance (such as vacation, personal leave, EDOs), observe extra rest, or trade turns with another employee on the same board.[26]

Elimination or exclusion of these provisions would not only conflict with Article VII but would also result in employees laying off for rest, or to handle personal business, thus exposing them to discipline under Carrier's attendance policy. The unplanned vacancy they create would cause disruption to the board, making call time predictability difficult for other employees assigned to the board. This could be avoided by including the provisions the Organization proposes.

6. Work Rule Concessions

The numerous concessions sought by Carrier in its proposal had no correlation or connection to the implementation of Articles V-VII, which do not contain verbiage

[26] The Trade Turn provision would allow an employee to trade positions with another employee further down the board, thus giving them a few extra hours at home to handle personal matters rather than laying off. For example, an employee who is three times out could trade with an employee who is 15 times out. They would switch positions on the board, moving the 15th out employee up to 3rd out and the 3rd out employee down to 15th out. Carrier benefits since this movement would not create a vacancy and the number of employees ready to go to work has not changed.

allowing changes to yard service (elimination of daily preference boards, calling/starting windows, yard studies), bulletin rules, elimination of penalty payments, bulletin time, bump time, temping of vacancies, notification or recall time from furlough. Carrier was unable, at any time during formal bargaining, to identify how any of these items are related to the terms and conditions needed to successfully implement Articles V-VII. This is so because they are not but are instead merely an attempt by the Carrier to extract gains at the expense of employees.

7. Buffer Boards

Carrier's desire to establish a system agreement for a "buffer" board sheds light upon its internal plans for reducing manpower and obtaining substantial monetary savings. Throughout the formal bargaining process, Carrier acknowledged how few employees return from furlough when recalled, especially if they have been furloughed for an extended amount of time, or recalled and furloughed multiple times in a short period.

Although this is not an item contained in Articles V-VII, and the Organization was therefore not required to bargain for such, the Organization was open to discussions on this issue provided any Carrier proposal was not like past agreements which, due to abuse and manipulation by Carrier's crew management services, caused countless employees to resign.[27] No proposal was presented by Carrier

[27] Crew management services (CMS) would only maintain a bare minimum number of employees on AWTS/'buffer' boards that paid significantly less than full-time assignments. At the same time, CMS made overzealous cuts to protecting extra boards, causing them to constantly be exhausted. When vacancies occurred and the extra board was exhausted, CMS would call employees off the AWTS/buffer board to protect the vacancy, thus turning the AWTS/buffer board into a supplemental extra board for a fraction of the cost and depriving countless employees of full-time work and pay.

differing from past agreements; thus no progress was made in negotiations. It would be improper and outside of this Board's jurisdiction to grant Carrier any such provision in the Board's final decision. However, should the Board consider the need to include such provision in its ruling, the remedy must provide an equitable quid pro quo to ensure that equity is maintained between the parties, provide protection for those adversely affected by the ruling, and address the Organization's concerns of Carrier abuse.

A remedy the Organization would not oppose is the establishment of a reserve/ ready work board with the same terms and conditions as provided in prior Agreements. These boards have been included in many on-property Agreements over the past several decades as a mechanism for retaining employees and providing equity to both parties **(Exhibit 62)**. Carrier is no stranger to these boards, having agreed to establish reserve boards in the June 7, 2023, Crew Consist Agreement on the Eastern District and Pacific Northwest territories **(Exhibit 63)**.

The establishment of a reserve/ready work board would be a long-term solution to Carrier's problem with retaining furloughed employees and returning them back to service in a compressed timeframe when needed. The employees are provided with benefits and enough compensation to support their families until they can hold a full-time position, giving them an incentive to retain their connection with Carrier and not seek permanent employment elsewhere.

8. Dispute Resolution

The creation of a disputes committee was also not contemplated or included in Articles V-VII of Public Law 117-216. Such a committee is not necessary if the parties address all concerns through an Agreement, Questions and Answers, and Side Letters. Following the implementation of an Agreement, nothing bars the parties from meeting to discuss issues prior to exercising any right under the RLA (Section 3 arbitration). Evidence of the ineffectiveness and delays a disputes committee has on the final resolution of a dispute will be addressed below in the section on Bad Faith Bargaining.

III. ALTERNATIVE WORK/REST MODEL

The parties did explore work/rest options outside of the Organization's original proposal that would grant pool freight employees more access to their compensated time off with increased earned days off (EDO) to use as needed. A reflection of this work/rest scenario is contained in Article I of the Organization's June 14, 2024, proposal *(Exhibit 32)*.

After much discussion, negotiations ceased over this issue due to Carrier's desire to incorporate Hours of Service relief and short turnaround service into pool freight, its refusal to compress guarantee, its insistence upon imposing financial penalties for the use of earned days off on guaranteed boards, its desire to impose unrealistic forfeiture rules on guaranteed boards, and its unwillingness to address or include two-thirds of the Organization's proposed terms and conditions which would ensure quid pro quo was achieved. A generalized comparison of the parties' positions over this alternative model follows:

SMART TD Proposal	Carrier Proposal
Self-supporting pools that protect pool freight vacancies only: • Voluntary 4/1 or 5/1-ability to extend 16 hours-based on workdays • Prearrange layoff threshold of 25% • Allowance for filling made-up turn • Turn swap/trade provision	Self-supporting pools that protect pool freight vacancies and irregular service: • 4/1 or 5/1 mandatory based on starts • Prearranged layoff threshold of 15% • No allowance for filling turns and flat rate for irregular service • Turn swap/trade provision-no details

SMART TD Proposal (continued)	**Carrier Proposal** (continued)
Extra boards (including yard and hostler) would continue to protect irregular service: • Mandatory 5/2-no deduction in pay for rest days • Compressed guarantee 1/11th • Bonus day paid at 1/11th • 1 layoff up to 48 hours without forfeiture • Minimum staffing of 30% of must fill assignments • Prearranged layoff threshold of 20%	Extra boards (including yard and hostler): • Mandatory 5/2-deduction for rest day • Compressed guarantee • No bonus day • 1 layoff up to 24 hours without forfeiture[28] • No minimum staffing • Prearranged layoff threshold of 5%
Pool freight regulation based on starts with a look ahead factor	Pool freight regulation based on starts with a look ahead factor
Earned days off for perfect attendance: • Non-guaranteed pool freight: 1 per half • Guaranteed pool freight: 1 per month with no deduction in guarantee	Earned days off for perfect attendance: • Non-guaranteed pool freight-1 per half with guardrails • Guaranteed pool freight-1 per half with deduction in guarantee for each day
Vacation modifications: • 1 float week per year • Designate up to 4 weeks as single days • No forcing of vacations in Jan/Feb with new method of calculating allocations • Advance or defer vacations up to 72 hours • Deadhead pay for filling outlying vacation vacancies • Vacation matrix for new hires	Vacation modifications: • 1 float week per year • Designate up to 4 weeks as single days • No forcing of vacations in Jan/Feb with new method of calculating allocations • Willing to address new hires vacation
11 Personal leave days for all employees	Not agreeable
Bereavement leave modification: • Add family members to adapt to modern family unit • Observe 3 days within 30 days of death	Not agreeable
Held-away-from-home terminal: • Continuous after 14 hours	Held-away-from home terminal: • Continuous after 16 hours
Away-from-home terminal meal • Increase to $20	Away-from-home terminal meal allowance • Increase-amount not specified
Delayed lodging pay after 30 minutes	Delayed lodging pay after 30 minutes
Rate progression for new hires eliminated	Not agreeable
Certification allowance increased to $20 RCL Certification increased to 2 hours	Not agreeable
Automatic Mark-up Interpretation preserved	Not agreeable
Penalty payments not used to offset guarantee	Not agreeable

[28] Carrier's final verbal position in formal bargaining would provide a bonus day to extra board employees if the Organization agreed to a one-and-done forfeiture rule (any non-compensated layoff would trigger forfeiture of guarantee) and the incorporation of irregular service into pool freight service.

SMART TD Proposal (continued)	**Carrier Proposal** (continued)
Automated Bid Scheduling: • Updated bulletin process • Updated forcing process with lodging, meals, travel time and pay allowances • 24-month timeframe to develop software and implement • Provision allowing road extra boards to protect yard vacancies and vice versa • Provision allowing pool freight to protect other service when all vacancy procedures are exhausted	Enhanced Bid System: • Bulletin time for new assignments reduced to 72 hours • Modification to re-bulletin rules-yard/road • Elimination of temping rules • Bump time reduced to 24 hours • Modified notification rules • Unusure of timeline for developing software or implementing
No changes to existing pools, extra boards and supplemental extra boards on T&P and IGN properties	Not agreeable
Reserve/Ready work board[29]	Buffer boards-no details

IV. QUID PRO QUO

The Organization is aware of Carrier's commitment before PEB 250 to negotiate an Agreement providing an equitable quid pro quo if its proposals were adopted. PEB 250 was persuaded by Carrier's sincerity and included its proposals, along with the Organization's, in its recommendation (Articles V-VII).

Before PEB 250, Carrier greatly undervalued the savings it would achieve and would not reveal its estimated savings under Articles V-VII to the Organization throughout the bargaining process, aside from stating it would be able to reduce guaranteed extra boards by 80 percent. The Organization spent considerable time gathering data in order to estimate, with accuracy, the value of what Carrier would obtain through the reduction of guaranteed extra boards. The data revealed that Carrier's estimated savings for self-supporting pools alone would be $333,587,000 annually *(Exhibit 43)*.

[29] SMART TD was opposed to buffer boards as proposed by Carrier but verbally proposed reserve/ready work boards during negotiations.

Carrier's desire to create buffer/AWTS boards added expense which the Organization was not seeking during voluntary bargaining. During the July 18, 2023, bargaining session, Carrier stated that the estimated cost of the Organization's proposal (*Exhibit 19*), with a provision that would satisfy Carrier's request for a buffer/AWTS boards, would be $300,000,000 annually. This proposal contained very similar provisions to the Organization's future proposals in formal bargaining, except for the buffer/AWTS boards, which were not included in the Organization's 2024 proposals.

The buffer/AWTS board added significant cost to the Organization's July 18, 2023, proposal that would not exist in the proposals presented during formal bargaining in 2024. Throughout the voluntary bargaining process in 2023, the Organization realized that obtaining an agreement for a buffer/AWTS board would be extremely complex and difficult to achieve, considering the past handling of these boards by Carrier and the different concepts within the bargaining group. The compressed timeline to bargain over Articles V-VII was not sufficient to properly address such a complex matter, thus the provision was omitted from the Organization's proposals in 2024.

This Board must consider and hold Carrier to its commitment before PEB 250 (*Exhibit 14*, page 90) to bargain an equitable quid pro quo. The TE&Y employees affected by this agreement should not be deprived of what Carrier committed to in PEB 250, nor should Carrier be allowed to make significant gains it did not rightfully obtain or is not entitled to. The Board should not entertain any argument from Carrier claiming they have met, or attempted to meet, the quid pro quo it committed to before PEB 250. Carrier's disregard for countless provisions in the Organization's proposals, as evidenced in its proposals to the Organization and its behavior in formal bargaining, demonstrates its desire to obtain substantial economic gains without improvements to its employees' quality of life.

Other Class 1 railroads have successfully negotiated, ratified, and implemented Agreements pertaining to Articles V-VII. These Agreements offered employees scheduled time off each week and contained provisions necessary to satisfy the quid pro quo and a successful implementation of the Agreements *(Exhibits 38* and *39)*. The following provisions were included, in addition to work/rest schedules, in other Class I Agreements as examples of those carriers' willingness to uphold their commitment to an equitable agreement.

BNSF	**NS**
Pool freight and road extra boards work/rest: • Primary/preferred 6.3 voluntary • Optional 5/2, 11/4, 7/3, 6/2, 6/2/4/2 Yard extra boards: • 5/2 Mandatory Assigned Service: • 4/3/3/4 or 3/2/2/3 Existing pool freight service that provides natural time off may remain in place along with any fatigue mitigation programs	Pool freight work/rest: • 6/2 preferred • 4/1 or 6/2/5/1 options Existing pool freight service that provides natural time off may remain in place
Pool freight regulation • Based on starts • Performed once a week	Pool freight regulation • Based on starts • Performed once a week
Trade/swap turn option	
Extra boards: • Maintained delineation between yard and road • Provision allowing road extra boards to protect yard vacancies and vice versa	Extra boards: • Maintained delineation between yard and road
Enhanced bid system: • Electronic process for submitting and administering bids • Standing bid process that is run daily at 11:00 a.m. • Enhanced vacancy procedures	Enhanced bid system: • Electronic process for submitting and administering bids • Method to assigned employees on a weekly cycle-assigned on Saturday/effective on Monday
6th week of vacation after 25 years or more	
Ability to float two weeks of vacation	Ability to accumulate personal leave

BNSF (continued)	**NS** (continued)
PRE-layoff for all single PLD/VAC, weekly vacation and earned days off	Ability to commence scheduled vacation early or reposition to foot of board
Earned Days Off: • 1 per quarter for perfect attendance for all trainmen (pool freight and extra boards)	Additional paid day off from 2022 Public Law 117-216 may be scheduled in the same manner as personal leave days.
Continuous held-away after 16 hours	Continuous held-away after 15 hours
Extra Paid Sick Leave: • Convert 3 personal leave days to paid sick days; OR • Convert 3 single vacation days to paid sick days	Paid Sick Leave: • Ability to convert to personal leave days to sick days-in addition to 5 paid sick days
Preventive care days expanded to all assignments and classes of service	
Away-from-home terminal meals: • Unfroze, now subject to future GWI's	Away-from-home terminal meal allowance: • Increased from $8.00 to $14.00
Bereavement leave: • Include additional family members • Flexibility when bereavement can be observed, allowed 3 days within 30 days following date of death	Weekend differential pay • $45.00 per start in pool freight that lays over. • $22.50 per start for pool freight that does not lay over. • $15.00 per start for all other service
Elimination of Entry Rate provisions for new hires	Escalated payment of service recognition bonus
New-hire training: • Increased from 13 weeks to 14 weeks • Additional 5 weeks of training time allotted in terminals that have RCO operations and hostling assignments	
Student, instructor and training coordinator pay rate increases • Trainee: Increased to $238.28 per day/six days per week with overtime after 48 hours per week. One time $200 travel stipend and $65.00 per day meal per diem • Instructor: 1.1 times the regular basic trip rate or basic daily rate • Training coordinator: Minimum of $6,353.86 per pay half plus vacation and expenses	
Certification Pay: • Rates unfroze • Subject to future GWI's	

The carriers involved in the above Agreements obtained desired operational efficiencies along with the stable and consistent workforce necessary to run efficient operations. The affected employees received an improved quality of life and compensation through various provisions, resulting in an equitable quid pro quo between the parties. In essence, the process worked as it was designed to by the Presidential Emergency Board.

Union Pacific's reluctance to negotiate with the Organization is puzzling. The Organization was willing to negotiate alternative work/rest schedules, as demonstrated in our June 14, 2024, proposal, which would have provided a workforce more stable and productive than that provided in the BLET 11-4 System Agreement. Under the 11-4 System Agreement, engineer pool freight boards were converted to guaranteed extra boards paying a high guaranteed rate with 96 days off per year, with the potential of receiving up to 120 days off per year, without forfeiture of guarantee. This is in addition to the compensated time engineers already received under their Collective Bargaining Agreements.

Competing Class I railroads have demonstrated what bargaining in good faith can achieve. They recognized their commitment to providing an equitable agreement and were able to successfully obtain the changes they sought in bargaining and improve their employees' quality of life as well. Conversely, Union Pacific approached the bargaining process with the objective of gaining significant operational efficiencies over its competitors, at a fraction of the cost, by depriving its employees of what they rightfully deserve and were promised in Public Law 117-216.

As explained in detail below, the Carrier's conduct in negotiations with the Organization and with another union that reached a voluntary agreement on these issues demonstrates that the Carrier's proposals do not achieve the goals outlined by Congress, but instead represent bad faith conduct with the only goal being the pursuit of financial advantages to the detriment of all else.

A. COMPETITIVE ADVANTAGE

Throughout the bargaining process Carrier insisted the BLET 11/4 System Agreement was the "pattern agreement" of the industry, one that the Organization must accept. The Organization contested this claim, for the reasons cited above, and pointed Carrier to several other SMART TD Agreements on Class 1 carriers that were negotiated within the full intent of Public Law 117-216, ratified, and successfully implemented.

The carriers involved in those agreements recognized the requirements of Public Law 117-216 and their promises before PEB 250 and fulfilled their obligations by providing an equitable quid pro quo. Union Pacific has not recognized the same; instead, it seeks to gain operational advantage at the expense of its own employees.

Through this arbitration Carrier is attempting to gain a competitive advantage over BNSF, a direct competitor. It will try to persuade this Board to reward it for its illicit bargaining tactics and petition for an agreement that would not only be disastrous for competing railroads who bargained in good faith, but harmful to its own employees.

B. BAD FAITH BARGAINING

There are many standards to which bargaining parties must adhere to ensure good faith efforts are maintained. These standards are key to the parties' success in reaching a voluntary and equitable agreement. Carrier failed to meet several of these key standards, preventing the parties from reaching a voluntary agreement.

Carrier repeatedly changed out key members of its bargaining team from its operating department. With each change, the Organization was required to spend considerable time re-explaining its position on key elements (voluntary days off, protecting unassigned service with the extra board, the number of earned days off, etc). It soon became apparent that Carrier was not at all interested in pursuing a voluntary agreement but was using surface bargaining tactics to delay the process.

Another example of Carrier's failure to bargain in good faith occurred when its agents failed to appear at a scheduled bargaining session. At the onset of formal bargaining, the parties scheduled several sessions in advance to ensure that attendance at such sessions would not be an issue for either party. The final bargaining session was scheduled for June 17-20, 2024, in Dallas, Texas.

Following the Las Vegas meeting on June 3-5, the Organization drafted yet another proposal, along with a cover letter explaining the rationale behind several proposed provisions. The Organization also confirmed the June 17 meeting and expressed a desire to reach a voluntary agreement. The cover letter and new proposal *(Exhibit 32)* were sent to Carrier on June 14, several days in advance of the June 17-20 meeting. No response was received and Carrier failed to attend the scheduled bargaining session.

The Organization arrived in Dallas on June 17, 2024, prepared to negotiate and discuss its recently revised proposal. On June 20, 2024, the Organization issued written correspondence to Carrier addressing its abandonment of negotiations (*Exhibit 33*). In its June 20, 2024, response (*Exhibit 34*), Carrier made many false allegations and provided the following "reason" for not attending the scheduled meeting: ***". . . we canceled our travel plans to Dallas because we did not believe those discussions would be productive."*** Thus, Carrier cancelled all travel plans with no notice to the Organization of its plan to forgo the Dallas meeting, despite receiving written correspondence from the Organization of its intent to bargain just days before the meeting.

The Organization responded on June 26, 2024 (*Exhibit 35*), refuting Carrier's false accusations with truthful facts and an accurate account of its position, which had not wavered throughout negotiations. Carrier's attempt to avoid accountability for its actions, and lack of action, not only illustrates bad faith bargaining but is also very unprofessional.

Additional examples of Carriers' unwillingness to deal with the Organization or entities, in an honest and forthright manner, can be found in **Exhibits 64, 65,** and **66**.

V. CONCLUSION

For the reasons set forth above, the Organization respectfully requests adoption of the following terms and conditions, which provide a fair and equitable agreement for the implementation of Articles V-VII of Public Law 117-216. With these terms, Carrier would obtain the operational efficiencies it has sought while its employees' quality of life and pay would be enhanced. A compilation of these provisions in agreement format are contained in **Appendix B**:

Article V:

- Articles I, II, and V of the Organization's proposal dated June 14, 2024 *(Exhibit 32)*, as the primary/preferred model for pool freight service and extra boards (yard and road), include minimum staffing levels on extra boards and new rules pertaining to guarantee on extra boards. Irregular service would continue to be protected by the extra board and pools would be self-supporting (protecting pool freight vacancies only). Addition of earned days off (EDO) would allow employees to observe rest outside the requirements of RSIA.

- Article I, B, C 3, and D of the Organization's proposal dated December 28, 2023 *(Exhibit 21)*, would serve as the optional voluntary work/rest models from which pools and extra boards could select.

- Article VI of the Organization's proposal dated June 14, 2024 *(Exhibit 32)*, and Article VI of the Organization's proposal dated December 28, 2023 *(Exhibit 21)*, would provide additional and more flexible use of vacation time and standardize the time compensated time begins.

- Article VII of the Organization's proposal dated June 14, 2024 *(Exhibit 32)*, would expand personal leave days to all classes of service, regardless of tenure.

- Article VIII of the Organization's proposal dated June 14, 2024 *(Exhibit 32)*, would modernize the bereavement rule to coincide with today's family unit.

- Article V of the Organization's proposal dated December 28, 2023 *(Exhibit 21)*, would provide held-away-from-home terminal pay after 12 hours at the far terminal and provide incentive for Carrier to properly manage crews.

- Article VIII, of the Organization's proposal dated December 28, 2023 *(Exhibit 21)*, would increase the away-from-home terminal meal allowance to $25.00.

- Article IX of the Organization's proposal dated December 28, 2023 *(Exhibit 21)*, would provide differential pay to employees who work nights, weekends, and holidays.

- Article XI of the Organization's proposal dated December 28, 2023 *(Exhibit 21)*, would provide overtime after eight hours, regardless of craft or class of service.

- Article X of the Organization's proposal dated December 28, 2023 *(Exhibit 21)*, would eliminate entry level rates of pay for new hires, increasing Carrier's ability to retain those employees.

<u>Articles VI and VII</u>:

- Article III of the Organization's proposal dated June 14, 2024 *(Exhibit 32)*, would modernize vacancy procedures, making them less cumbersome for Carrier, retain the demarcation between yard and road service, and properly compensate employees for working in addition to their regular assignment.

- Side Letter #1 of the Organization's proposal dated June 14, 2024 *(Exhibit 32)*, would establish an automated bid scheduling process within 24 months and lodging for employees forced away from their home terminal.

- Article IV of the Organization's proposal dated June 14, 2024 *(Exhibit 32)*, would convert pool freight regulation to starts and include a look-ahead factor.

- Side Letter #2 of the Organization's proposal dated June 14, 2024 *(Exhibit 32)*, would prohibit changes to existing pools, extra board, and supplemental extra boards that were established under former T&P and IGN properties.

- Article XI of the Organization's proposal dated June 14, 2024 *(Exhibit 32)*, would provide an allowance for delayed lodging at the away-from-home terminal.

- Articles XIII and XIV of the Organization's proposal dated June 14, 2024 (*Exhibit 32)*, would increase certification allowances, preserve the Automatic Mark-Up Interpretation in its entirety, and eliminate any provisions which allow penalty payments to offset guarantee.

- Article VI of the Organization's June 14, 2023, Crew Consist Agreement *(Exhibit 32)* would establish a ready work board, fulfilling Carrier's request for a buffer board, and provide protection to any employee adversely affected by the implementation of Articles V-VII.

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SPECIAL BOARD OF ADJUSTMENT 1208

<u>Case No 1</u>

SMART Transportation Division
v
Union Pacific Railroad

With

Neutral Earlene R Baggett-Hayes

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Appendix A
Organization's Position Regarding
Article VII(b)(6) Arbitration on the
IGN and T&P Properties
Articles V-VII of Public Law 117-216

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INTRODUCTION

The following sections will outline the Organizations position regarding Guaranteed Combination Extra Boards and Supplemental Extra Boards on the IGN and T&P properties and why they are barred from modification under Article VII(b)(6) of Public Law 117-216. The Organization will elaborate on the moratoria contained in the 1993 and 1996 Crew Consist Agreements **(Exhibits 67, 68 and 69)**, PLB 7960 Procedural Award (Bell Award) **(Exhibit 70)**, PLB 7960 Merit Award (LaRocco Award) **(Exhibit 71)**, discussions and proposals in bargaining, and Carrier's misinterpretation of the aforementioned agreements and awards.

AGREEMENT PROVISIONS AND ARBITRATION AWARDS

I. Agreement Provisions

Article V, (2), (b), of the 1993 Crew Consist Agreement (Exhibit 67) specifically prohibits changes to any item contained in the Crew Consist Agreements, unless made through mutual consent.

> **"The parties may make changes to this Agreement by mutual consent."**

Section 6, of the 1996 Crew Consist Agreements (Exhibits 68 and 69), contain identical language that protects the integrity and intent of the moratoria established in the 1993 Crew Consist Agreement.

Section 6 of September 5, 1996, Crew Consist Agreement:

> ***"...It is recognized that moratorium provisions currently in place pertaining to crew consist provisions will remain in full force and effect and will not be altered in any forum including but not***

limited to National Negotiations and Boards established pertaining thereto."

The language in these two provisions is explicit: the Crew Consist provisions, including extra boards provisions as contained in the 1988 Crew Consist Agreement **(Exhibit 72)**, and as amended in October 3, 1996, Memorandum of Agreement **(Exhibit 73)**, are protected against any modification unless through mutual agreement The parties agreed to expand their intent of safeguarding all terms contained in the Crew Consist Agreements in Section 6 of the 1996 Crew Consist Agreement. This safeguard includes National Negotiations and Arbitration Boards established pertaining thereto.

II. <u>Arbitration Awards</u>

In 2019, Carrier sought changes to the Crew Consist Agreement in National Bargaining. A dispute arose between the parties over the aforementioned moratoria language to which Carrier invoked arbitration under Section 3 Second ¶2. The issue first went before Neutral Weldell Bell (PLB 7960, Award No. 1) who framed the issues to be decided by the Merits Public Law Board. In their submission to Neutral Bell, Carrier requested a final and binding interpretation of the moratoria language.

Exhibit 70, pg. 9:

"To resolve this dispute [crew consist moratoria] in a comprehensive manner and on a permanent basis, the railroads seek a final and binding interpretation of the moratorium langue identified in the agreements…"

Following the ruling of Neutral Bell, the dispute was progressed to arbitration before Neutral John LaRocco, PLB No. 7960, Award Nos. 2-10, who ruled on the merits set forth by Neutral Bell. In his award, Arbitrator LaRocco unequivocally affirmed the indefinite and expansive nature of the moratorium covering the IGN and T&P properties.

Exhibit 71, page 23:

> "…**this Board used the fundamental rule of contract interpretation that the clear language**, along with the plain and ordinary meaning of the words demonstrates the meaning of a contract provision."
>
> "…Under the plain language rule for construing contract language, **the T&P moratorium governs the entire Agreement and does not fix a condition, event, or time for its expiration.** The T&P moratorium clause is indefinite. By its plain language, the clause bars the Carrier's Section 6 Notice. Thus, the second paragraph of the T&P moratorium clause [Article V(2)(b)] takes on great importance. **The parties must make changes by "mutual consent"."**

This ruling established a final, binding interpretation of the moratorium, clarifying that not only crew size, but all provisions in the crew consist agreement are safeguarded under the moratorium, which has no expiration or limit on its protections. By confirming the indefinite nature of this moratorium, LaRocco's Award explicitly prohibits any unilateral alteration of the Extra Boards. The Carrier's attempt to impose arbitration over a protected provision disregards this binding precedent and violates the finality of the LaRocco Award, which clearly states that any alterations to the crew consist provisions must have the consent of both parties.

The Carrier received exactly what it asked for in the Bell and LaRocco Awards: a conclusive and binding ruling on the scope of the IGN and T&P moratoriums. Yet, in direct contradiction of their previous stance, the Carrier is now attempting to revisit these settled issues through arbitration over the very provisions the LaRocco Award has already conclusively protected.

III. Organization's Position

From the outset of bargaining over Articles V-VII of Public Law 117-216, both General Chairmen, Roy Davis and Scott Chelette, consistently held that Carrier cannot unilaterally alter or change the extra boards on their respective IGN and T&P properties unless done so through mutual agreement. These extra boards were established under the 1980 Crew Consist Agreement **(Exhibit 74)**, modified in the 1988 Crew Consist Agreement and one final time in 1996.

This history and the Organization's position was communicated explicitly during multiple meetings between January 2023 and July 2024 and reinforced in Side Letter #2 of the Organization's final proposal dated June 14, 2024.

Exhibit 32, Side Letter #2:

> *"**This will confirm our understanding that the Carrier is barred from implementing any unilateral change to existing pools, extra boards, and supplemental extra boards that were established under the controlling Crew Consist and/or the DFW/San Antonio/Longview and Houston Hub Merger Implementing Agreements on the T&P and IGN properties.** This includes, but is not limited to; pay elements, board regulation, establishment/combining/ abolishment of road, yard, road/yard combination and/or supplemental extra boards and the regulation thereof. **Following the effective date of this Agreement, pools and extra Boards on these properties may only be altered or modified by mutual agreement between the parties.**"*

This language recognizes the moratoria provisions of the Crew Consist Agreements, and ruling from Neutral LaRocco, which prohibit changes to any portion of the agreement except through mutual agreement.

To ensure Carrier understood the Organization's position during bargaining, the Organization sent an in-depth and comprehensive explanation in writing on July 24, 2024 (**Exhibit 75**). In this letter, General Chairpersons Davis and Chelette outlined the history of extra boards and moratoria language in the Crew Consist Agreements, PLB 7960 Awards, Merger Implementing Agreements, and Hub Agreements. Carrier cannot claim ignorance of their knowledge of these provisions nor argue against the plain meaning of the moratoria provision as it's been recently interpreted at a tribunal.

IV. Carrier Position

In its response, dated August 16, 2024 (**Exhibit 76**), Carrier argued that if Section 6 intended to prohibit arbitration, it would have included an exception like Side Letter #5 in the 1996 UTU National Agreement (**Exhibit 77**). The Organization firmly rejects this assertion. Section 6 of the 1996 Crew Consist Agreement explicitly protects the crew consist provisions from any alteration through forums, Boards, or National Negotiations. No further exception was necessary.

Furthermore, the Carrier's interpretation that Section 6 only prevents changes to the moratorium itself rather than the agreement's substantive provisions is contradicted by the plain language in Section 6, which asserts that ***"the intent and terms of this agreement shall prevail."*** This clause establishes a broad protection that clearly covers the entire agreement, including Extra Boards and Supplemental Boards, not only the moratorium clause itself.

The LaRocco Award explicitly prohibits any unilateral alteration of the Extra Boards, thus confirming the indefinite nature of the moratorium. Carrier's attempt to impose arbitration over a protected provision disregards this binding precedent and violates the finality of the LaRocco Award, which clearly states that any alterations to the Crew Consist provisions must have the consent of both parties.

V. Mutual Consent

The moratorium clause was specifically designed to require mutual agreement on all crew consist matters. Section 6 of the 1996 Crew Consist Agreement and the LaRocco Award together enforce a procedural safeguard that prohibits any action on protected provisions without mutual consent. The Carrier's bypassing of this requirement disregards both the contractual obligations under the 1996 Crew Consist Agreement and the procedural fairness outlined in the Railway Labor Act (RLA).

By attempting to circumvent the requirement for mutual agreement and impose arbitration unilaterally, the Carrier's actions violate the procedural expectations under the Railway Labor Act. The RLA establishes that disputes over contractual terms must first be handled through good faith bargaining and on-property resolution processes. However, in this instance, the Carrier is disregarding these processes and moving to arbitration over Extra Boards without any semblance of mutual consent. This violates both the letter and the spirit of the RLA, further nullifying their position.

VI. Conclusion

The IGN and T&P moratoria, established under the Crew Consist Agreements, and upheld by PLB 7960, make it abundantly clear that Extra Boards and other crew consist provisions are protected from any unilateral changes. The LaRocco Award provides a binding, comprehensive resolution to these matters, effectively denying the Carrier any means to proceed with arbitration without mutual consent.

The Organization respectfully requests the Board acknowledge the finality of the LaRocco Award and Section 6 of the 1996 Crew Consist Agreement and decline to arbitrate any proposed changes to the Extra Boards on the IGN and T&P properties. Such ruling will honor the established contractual protections and ensure the final and binding nature of previous awards and agreements is respected.

SPECIAL BOARD OF ADJUSTMENT 1208

Case No 1

SMART Transportation Division
V
Union Pacific Railroad

With

Neutral Earlene R Baggett-Hayes

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Appendix B
Organization's Recommendation
For Remedy
Articles V-VII of Public Law 117-216

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MEMORANDUM OF AGREEMENT

Between

UNION PACIFIC RAILROAD COMPANY

And the

SHEET METAL, AIRLINE, RAIL and TRANSPORTATION

TRANSPORTATION DIVISION (SMART-TD)

SYSTEM AGREEMENT

Public Law 117-216 – Application of Articles V, VI and VII

This Agreement will set forth the terms, conditions, and applications of Article V – Scheduled Days Off, Articles VI – Automated Bid Scheduling, and VII – Pools and Extra Board as contained in Public Law 117-216 and satisfy the requirements therein. Except as specifically set forth herein, no other Agreement rules, practices, or interpretations are changed by the terms of this Agreement.

Article I: Work/Rest Implementation – Pool Freight

The Parties recognize the current process for manning and scheduling time off in pools must be modified and improved upon. This Agreement provides employees working in pool freight with greater flexibility and access to compensated time off for use when needed to maintain a balanced work/home life and ensures stability within pool freight and maintains proper and consistent home time between trips.

A. Within thirty (30) days from the effective date of this agreement, the General Chairperson, or their designee, will determine the work/rest schedule for each pool under their jurisdiction. Following the implementation of this agreement, if the General Chairperson desires to change the work/rest schedule for a pool, they must file a thirty (30) day written notice to Carrier.

    1. Six (6) workdays or available for workdays followed by three (3) voluntary rest days (6/3).

    2. Six (6) workdays or available for workdays followed by two (2) voluntary rest days (6/2).

    3. Five (5) workdays or available for workdays followed by (2) voluntary rest days (5/2).

    4. Four (4) workdays or available for workdays followed by (2) voluntary rest days (4/2).

    5. Four (4) workdays or available for workdays followed by (1) voluntary rest days (4/1).

    6. Combination of six (6) workdays or available for workdays followed by two (2) voluntary rest days, then four (4) workdays or available for workdays followed by (2) voluntary rest days (6/2) (4/2).

    7. For assigned service, alternative work weeks such as (4/3 3/4) or (3/2 2/3) may be negotiated.

8. Other work/rest schedules may be mutually agreed upon.

9. Existing pool service that naturally provides predictable time off may remain in place unless changed by the General Chairperson or their designee.

10. Any pools or extra boards that have existing fatigue mitigation programs and/or provisions in place prior to this Agreement will have the ability to maintain their current fatigue mitigation system.

B. The preferred/primary work/rest schedule for pool service will be as follows, unless otherwise specified by the General Chairperson, or their designee, in accordance with A. above.

1. All pool freight will be self-supporting and operate on a first in/first out basis at the home and away from home terminals, based on tie-up time. In the event two trainpersons tie up at the same time, the board will be ordered based on the last on duty time. Pool turns will protect pool freight only as outlined below. Hours of service relief, turnaround service, work train service, locals, etc., will be protected by the protecting extra board.

2. When the owner of a pool turn lays off, either in compensated or non-compensated status, their turn will be removed from the board at time of lay off. Upon mark up, the turn will be placed at the foot of the board and work up the board in the normal board order. Pool turn employees observing mandatory rest will rotate up the board and remain first out until rested.

3. When a pool board is exhausted, a made-up turn will be added to the board at the home terminal. The made-up turn will take its turn to the away-from-home terminal and be removed from the pool upon tie-up at the home terminal. The made-up turn will be filled with an employee from the protecting extra board at the pool board location. The starts of all made-up turn(s) will be factored into the regulation of the pool in which the made-up turn was utilized.

4. If there are no rested and available extra board employees at the call time of the made-up turn, the first out rested and available trainperson from a different pool at the same location may be used on the made-up turn. Trainpersons used in such manner will be made whole by the allowance of the earnings of the step up or the earnings of their regular assignment, whichever is greater, plus 65 miles for each round trip on a made-up turn. Employees will be placed at the foot of their assigned board upon tie up from the made-up turn and remain there until the employee marks up in OK status. The starts of all made-up turn(s) will be factored into the regulation of the pool in which the made-up turn was utilized.

    a. If a pool is utilized to fill vacancies on a different pool more than four (4) starts in a weekly regulation period, Carrier must add one (1) position to the protecting extra board for the entirety of the following regulation cycle to ensure proper coverage of the pool board is maintained.

5. All pool board prearranged layoff system (PALS) thresholds for compensated time off (vacation and personal leave) and EDO's will be increased to no less than twenty-five percent (25%) of each respective board per day.

a. Employees will have the ability to schedule pre-arranged days six (6) months in advance but no later than the Sunday before the regulation date to observe a pre-arranged day the following week. Once scheduled, days cannot be taken away or denied by the Carrier.

b. Employee cancellation of prearranged days must be no later than Sunday prior to regulation day.

c. The Carrier will provide the respective General Chairperson with a monthly report listing each pool freight board in their territory and the layoff threshold for each, upon request, to ensure the threshold is being maintained.

d. The General Chairperson and the Local Chairpersons will be provided with administrative access to Carrier's prearranged system to the extent they may view the scheduled prearranged days on each board in the next six (6) months.

6. It is agreed that all pre-scheduled/pre-approved personal leave days and vacation (both weekly and single day) will begin at 9:00 a.m. and end at 8:59 a.m.

   a. Trainpersons will be allowed to advance or defer their prearranged/pre-approved days up to sixteen (16) hours.

7. All pools will have a schedule of four (4) workdays or available for workdays followed by one (1) voluntary rest day (4/1). Turn around pools may elect a schedule of five (5) workdays or available for workdays followed by one (1) voluntary rest day (5/1) or four (4) workdays or available for workdays followed by one (1) voluntary rest day. Employees who observe a voluntary rest day will have the option of extending their rest up to sixteen (16) hours and must notify Carrier of such intent prior to the expiration of their voluntary rest day. Employees who elect not to observe the voluntary rest day will be subject to RSIA.

   a. Time spent observing a voluntary rest day(s) during a pay period will not cause a reduction in guarantee or forfeiture of a bonus day.

   b. Trainpersons assigned to guaranteed pool freight boards who voluntarily observe rest days will not have guarantee reduced in any manner.

8. To increase employee work schedule flexibility, trainpersons in OK status or who are observing required (RSIA) rest on the same board may elect to swap positions/turns utilizing the following process:

   a. Trainpersons who are interested in potential turn swap opportunities must "opt-in" utilizing the applicable electronic system.

   b. Utilizing the "Turn Swap" tool in the applicable electronic system, a trainperson may select the trainperson with whom they want to swap board position:

   c. Only one swap request is permitted at any time.

d. The trainperson must select the trainperson they wish to swap turns with and a period of 10, 20, or 30 minutes for the request to be responded to.

e. Once the request is submitted, the Carrier will present the swap offer to the selected trainperson. The offer will be available for the period selected. If no action is taken, the request will automatically be denied, and the trainperson may submit a new request.

f. If the receiving trainperson declines, the Carrier will notify the requestor that the swap was rejected. At this point, the trainperson may submit a new request.

g. If the request is accepted, the Carrier will swap board positions and notify both trainpersons of the swap. This move will permanently switch board positions, and there will be no restoration of turns.

h. Moving up on the board via turn swap will not be available for trainpersons who have a pre-approved layoff scheduled within 24 hours.

i. Trainpersons may only utilize the swap turn function once between working trips.

j. Trainpersons who utilize turn swap and subsequently layoff, excluding bona-fide/provable emergencies or medical reason, will be shown as "laid off on call," and handled in accordance with the Carrier's attendance policy.

k. Trainpersons who swap turns will be paid for the service performed (i.e. no make whole payments) unless their new turn steps up in the pool as described in Section B. above. If such occurs, trainpersons will be compensated in accordance with Section B.

l. Trainpersons assigned to guaranteed pool freight boards who utilize the turn swap option with not have guarantee reduced in any manner.

<u>Article II: Work/Rest Implementation – Extra Boards</u>

A. The parties mutually agree the preferred/primary work rest schedule for all yard (including hostlers) and road extra boards will be five (5) workdays or available for workdays followed by a voluntary forty-eight-hour rest period (rest days). Unless otherwise modified below, existing guarantee provisions remain in effect.

1. Extra board positions will be assigned consecutive days off which will be based on the needs of service. When possible, and not interfering with the needs of service, Carrier will make every attempt to schedule days off on Saturday and Sunday.

   a. Bulletins for extra board assignments will include the scheduled voluntary rest days of the assignment.

b. When reductions to an extra board are necessary, the senior employee with request on file to be reduced, followed by the junior most employee on the set of rest days to be cut will be reduced.

2. The guaranteed mileage (road boards) and days (yard boards) will be compressed into eleven (11) days per pay period.

3. An employee who lays off non-compensated, will have their guarantee reduced one (1) day for each twenty-four (24) hour period at the 1/11th rate.

4. An employee assigned to a guaranteed extra board who lays off non-compensated for more than one (1) occurrence per pay period or who is unavailable for more than forty-eight (48) hours per pay period, will forfeit their guarantee and bonus day.

5. An employee assigned to a guaranteed extra board who observes compensated days off will receive the prorated guarantee daily rate for each day the employee observes a compensated day or the compensated day rate, whichever is greater. Compensated days will not be used to offset guarantee in any manner.

6. An employee assigned to a guaranteed extra board who does not have a work event between layoffs will not have guarantee deducted for time/days between layoffs if the layoffs are seventy-two (72) hours or greater apart. In such instances, the employee will only have guarantee deducted for actual time spent in non-compensated status.

7. Employees who utilize FMLA while assigned to a guaranteed extra board will have their guarantee reduced one (1) day for each twenty-four (24) hour period at the 1/11th rate. Such layoffs will not be included in Item 4. above but will forfeit an employee's bonus day.

8. Guarantee reductions shall not apply for absences due to bereavement leave, compensated time off, company business, jury duty, physical examinations, or other instances where the employee is held at the instruction or behest of the Carrier.

9. Employees who layoff for union business will have their guarantee reduced one (1) day for each twenty-four (24) hour period at the 1/11th rate. Such layoffs will not be included in Item 4. above nor will they result in forfeiture of guarantee or the bonus day.

10. Employees who are awarded an extra board assignment and are only assigned for a portion of the pay period, will be compensated a prorated daily rate of 1/15th for each day they are assigned to the extra board, regardless of the time added to the extra board, including rest days.

11. Employees who are displaced from a set of extra board rest days and place to a different set of extra board rest days, will be compensated a prorated daily rate of 1/15th for each day they are assigned, including rest days. Employees who exercise seniority within twenty-four (24) hours will remain eligible for the bonus day payment as provided in 12. below.

12. Employees assigned to an extra board who remain available for their scheduled workdays will receive a bonus day which will be paid at the 1/11th compressed guaranteed rate. The bonus day will be paid above and beyond guarantee each pay period.

13. Employees who observe RSIA required rest while working a guaranteed assignment will have no deduction to guarantee, or forfeiture to the bonus day, for any day/time spent in federal rest.

14. Carrier must maintain a sufficient number of employees on extra boards to permit reasonable absence privileges. The minimum number of extra board employees will equal thirty (30%) percent of all must fill assignments protected by that extra board.

15. All extra board prearranged thresholds will be increased to no less than twenty percent (20%) each day, on each individual extra board.

16. Extra board employees may commence their voluntary rest period at 18:00 the day prior to their scheduled days off. Employees will be marked up at the foot of the board and available for a 07:59 call time the day immediately following their voluntary rest day(s) unless an employee trespasses into their rest day(s). Any extra board assignment that trespasses into its voluntary rest days, and desires to observe such days, will be placed into rest day status for forty-eight (48) hours after legal rest is completed at the home terminal. Upon expiration of the forty-eight (48) hours of rest, the employee will be marked up at the foot of the board and will rotate up the board in the normal manner.

17. Extra board employees that indicate they desire to observe their voluntary rest days and are called to work out of town (pool turn) on their last workday, will be immediately deadheaded home upon arrival or immediately following mandatory rest at the away-from-home terminal. The employees' guarantee will not be deducted if the forty-eight (48) hour period trespasses into the following work cycle.

NOTE 1: Items 4, 5, 6, 8, 10, 11, and 13 of this Article II, A., apply to existing guaranteed pool freight.

NOTE 2: Items 7., and 9., of this Article II, A., also apply to existing guaranteed pool freight however, the prorations cited therein will be calculated at the 1/15th rate.

Article III: Earned Day Off

A. For any pay period in which a trainperson achieves perfect attendance (as outlined below) in non-guaranteed pool freight, that trainperson will qualify for one unpaid Earned Day Off (EDO) to use within a rolling twelve (12) month period. Employees may schedule up to seven (7) EDO's concurrently in the pre-arranged system. Single EDO day(s) may be used on demand and cannot be denied by the Carrier except for the Fourth of July, Thanksgiving, the day after Thanksgiving, Christmas Eve and Christmas Day. Beginning at 18:00 on the day preceding the Fourth of July, Thanksgiving, and Christmas Eve, EDO's will be subject to supply and demand.

B. For any thirty (30) day period in which a trainperson achieves perfect attendance (as outlined below) in guaranteed pool freight, that trainperson will qualify for one unpaid Earned Day Off (EDO) to use within a rolling twelve (12) month period. Employees may schedule up to seven (7) EDO's concurrently in the pre-arranged system. Single EDO day(s) may be used on demand and cannot be denied by the Carrier except for the Fourth of July, Thanksgiving, the day after Thanksgiving, Christmas Eve and Christmas Day. Beginning at 18:00 on the day preceding the Fourth of July, Thanksgiving, and Christmas Eve, EDO's will be subject to supply and demand.

C. Perfect attendance is defined as remaining marked up on their assignment, observing rest, or other absences that are sanctioned by Agreement (e.g., LV, BV, FL, PL, PS, LY, LU, etc.). Employees will be disqualified from Perfect Attendance status by taking non-compensated time (i.e., laying off unpaid sick, sickness in family, or missing a call for service).

    1. Trainpersons must be in active service to utilize earned EDO(s).

D. EDO's will start at 9:00 a.m. and end at 8:59 a.m. on scheduled days. Trainpersons will be allowed to move their EDO's ahead or behind, for up to sixteen (16) hours.

E. Trainpersons who are working or away from their home terminal at the beginning of an authorized EDO may request to be tied up for 24 hours in EDO status immediately upon return to their home terminal or rescind their EDO request.

F. An EDO will not disqualify a trainperson from perfect attendance eligibility.

G. Any EDO that is requested may only be denied in exigent circumstances other than those holidays listed in A. or B. above by Carrier. Any EDO request that is denied by the Carrier will result in payment of a basic day at the rate of the last service performed over and above all earnings without deduction therefrom and the employee will retain the EDO(s) to be used during the next two pay periods.

> NOTE: Exigent circumstances will be defined as 1) a derailment or other accident necessitating immediate action to protect persons or property, 2) fire, storm, flood and other similar circumstances beyond the control of the Carrier that necessitate immediate action to protect persons and/or property.

H. Employees who elect not to utilize their available EDO(s) in the rolling twelve (12) month period will be paid a basic daily rate for each EDO at the last service performed. Such payments will be in addition to earnings and paid over and above guarantee.

I. EDOs confer the trainperson the right to be off, not the right to compensation. The EDO may be used in conjunction with a Personal Leave Day or a Vacation Day to provide the employee compensation, but the primary use of the EDO is for the trainperson to secure desired time off. Use of an EDO, whether the employee chooses to use compensation or not, cannot be held against an employee for discipline, absenteeism, or attendance in any manner.

J. Employees will not be required to use EDO's in concurrence with, or prior to, Paid Sick days or any other paid or unpaid status.

K. Employees working in guaranteed pool freight will be allowed the use of one (1) EDO per pay period without deduction in guarantee or forfeiture of the bonus day.

Article IV: Vacancy Procedures

A. At any location where separate road and yard extra board(s) exist, the following will apply:

1. The road extra board(s) will remain the primary source of supply for road vacancies, and the yard extra board will remain the primary source of supply for yard vacancies.

2. In the event the yard extra board (or straight time yard extra board employees where applicable) is exhausted, the following call order will apply:

a. Regularly assigned yard employees on rest days who have requested extra work will be called in seniority order and must accept the call for service. Should an employee miss a call for service under this provision they will not be subject to discipline but will be removed from the call list for thirty (30) days. Employees who work extra on their assigned days off will be compensated the prorated extra board daily rate (at $1/11^{th}$) for each tour of duty or the rate of the assignment at time and one half for each tour of duty, whichever is greater.

b. Yard extra board employees observing rest days who have requested extra work will be called in seniority order and must accept the call for service. Should an employee miss a call for service under this provision they will not be subject to discipline but will be removed from the extra work list for thirty (30) days. Employees who work extra on their assigned days off will be compensated time and one half for each tour of duty. Employees who work extra on their assigned days off will be compensated the prorated extra board daily rate (at $1/11^{th}$) for each tour of duty or the rate of the assignment, whichever is greater. Such earnings will be paid over and above guarantee and bonus day payments.

c. Should a specific road extra board have a call list of employees for supplemental work, the first-out rested employee who has requested to be called for extra work will be called for service and must accept the call. Such earnings will be paid over and above guarantee and bonus day payments.

d. If there are no rested employees who have requested to be called for extra work, the first-out rested employee on the road extra board at the same terminal must accept the call. Such earnings will be paid over and above guarantee and bonus day payments.

3. In the event the road extra board(s) is exhausted, the following call order will apply:

a. Should a specific yard extra board have a call list of employees for supplemental work, the first-out rested employee who has requested to be called for extra work will be called for service and must accept the call. Such earnings will be paid over and above guarantee and bonus day payments.

b. If there are no rested employees who have requested to be called for extra work, the first-out rested employee on the yard extra board must accept the call.

4. When an employee on the road extra board is called to fill a yard vacancy, they will be allowed the difference in pay, if any, between the road assignment missed and the yard assignment worked, and the make whole pay or earnings will be paid above and beyond guarantee.

5. When an employee on the yard extra board is called to fill a road vacancy, they will be compensated for the position worked and will convert to the applicable road guarantee rate of pay for the entire pay period in which the on-duty time of the outbound trip at the home terminal occurred.

B. After exhausting the steps listed above, if there is no other rested and available employee, Carrier may call the first out rested employee from pool freight to fill the vacancy. A pool freight employee who is called for such irregular service will be made whole for all lost earnings, in addition to the earnings of the assignment, and compensated an additional sixty-five (65) miles. Upon tie up, the employee will be placed at the foot of the pool board and the irregular start will not be included in the pool freight regulation factor. The sixty-five (65) miles will be paid in addition to guarantee on guaranteed pool freight boards.

NOTE: If a pool is utilized for vacancies other than pool more than four (4) times in a weekly regulation period, Carrier must add a position to the protecting extra board. It is not the intent of this provision for pool employees to be used for work outside of the pool but is intended to meet operational needs during exigent circumstances. Exigent circumstances will be defined as 1) a derailment or other accident necessitating immediate action to protect persons or property, 2) fire, storm, flood and other similar circumstances beyond the control of the Carrier that necessitate immediate action to protect persons and/or property.

C. At locations where no extra board currently exists, the Carrier may establish a new road, new yard, or new combination road/yard extra board(s), with thirty (30) days' written notice. The parties will have thirty (30) days to set reasonable terms for the new extra board(s) based on similar boards. Additionally, the Carrier will not force employees from an existing source of supply to provide manpower for these extra boards.

Article V: Pool Regulation/Board Adjustments

A. Beginning the effective date of this Agreement, non-guaranteed pool freight service will be regulated monthly on starts rather than mileage. The following start table applies to all pool freight:

Pool Mileage	Pool Factor
Up to 150	Between 22 and 24
151-180	Between 20 and 22
181-230	Between 19 and 21

231-260	Between 17 and 19
261-290	Between 15 and 17
291 or greater	Between 14 and 16

B. The determined monthly starts target listed in the table may be modified by mutual agreement.

C. The monthly starts of a pool shall be calculated by multiplying the number of starts during the 20-day check period by 1.5 and then dividing this number by the pool factor to calculate the total prorated monthly starts. Next, multiply the prorated monthly starts by a "look ahead" factor that accounts for known vacancies (LV, PL, EOD, etc.) that are scheduled in the upcoming seven (7) days (Wednesday through Tuesday). The "look ahead" factor will be calculated by adding the total number of known days and dividing them by seven (7). Resulting fractions will be rounded down unless mutually agreed upon by CMS and the General Chairperson or their designee (Local Chairperson).

NOTE: The General Chairperson or their designee (Local Chairperson) and CMS may mutually agree to adjust the "look ahead" factor outside of the parameters on a temporary basis when abnormal fluctuations occur to prearranged days. Such adjustments will not occur more than two (2) adjustment cycles in a row.

D. If the average monthly starts per turn are outside the parameters, the pool will be adjusted so the average number of monthly starts per turn is within the applicable range for the pool. When mid-range adjustment is the objective, resulting turn fractions of .50 or greater will be rounded up and .49 or below will be rounded down, unless mutually agreed upon by CMS and the General Chairperson or their designee (Local Chairperson).

Example: A pool has 224 starts in the 20-day look back and has a mid-range of 18. There are 25 days of scheduled time off (LV, PL, EOD, etc.) in the 7 day look ahead.

224 x 1.5 = 336 projected starts for the month.
336 starts divided by the mid-range factor of 18 =18.66 or 19 positions.
The board has 25 total days of time off (LV, PL EOD, etc.) scheduled in the upcoming 7 days.
25 divided by 7 = 3.57 or 3 positions.
19 positions + the 3 positions to account for scheduled time off = 22 positions.

E. A start is defined as any outbound start made in a pool (from the home or away-from-home terminal), including deadhead, turnaround trips, etc. made by either a pool turn, or make-up turn in a pool.

F. To ensure the successful application of this provision, within three (3) months of the effective date of this Agreement, and annually thereafter, the monthly start regulation range of a specific pool will be reviewed by the parties to ensure the following:

1. The method meets operational obligations in comparison with current/previous mileage agreements used for pool freight regulation.

2. Achieves manpower stability to prevent cross utilization of pools and use of make-up turns.

3. Provides pool employees sufficient home cycle time between trips in comparison to current/previous mileage agreements used for pool freight regulation.

4. Ensures earnings are no less than what can be achieved through the respective mileage agreements in place at the time the agreement is made effective.

G. All pool and extra board adjustments will be made every Wednesday. Carrier may add turns to extra boards on any day of the week with mutual concurrence from the governing SMART-TD Local or General Chairperson but may only cut extra board positions on Wednesday.

H. Due to an abnormal influx (or absence) of traffic operating over a particular pool's run, the parties may elect to use a ten (10) day check period (look-back) to minimize the long-term effect of the traffic variability. Should this occur, the parties may mutually agree to use a multiplier of up to 3.0 versus 1.5.

I. Should a pool freight employee not obtain the target starts for their pool, due to no fault of their own, they will be compensated a trip rate for each start up to the mid-range target. For example, a 190-mile pool has a target of 19-21 starts. Employee A was available for service the entire month but only acquired 17 starts. Carrier would compensate Employee A three trip rates (20 minus 17) to ensure earnings were maintained within the target range.

Article VI: Vacations

A. Effective January l, 2025, employees assigned vacation under the jurisdiction of SMART-TD will be allowed to select one week to float as single days. Regularly scheduled weeks of vacation designated as single days will be drawn from prior to the use of the float week. Employees with unused float days on August 1st must schedule the unused days in the prearranged system by August 15th. Unused days not scheduled by August 15th will be banked in accordance with the provisions of Article II, A of the August 1, 2023, Time Off for Illness and Wellness Agreement between Union Pacific Railroad and SMART-TD.

1. The designated float week will be excluded from the number of total vacation weeks to be assigned in each vacation grouping and, as such, will not be included in the parameter allotment nor scheduled. The local chairperson must advise Crew Management Systems (CMS) of the number of "float" weeks requested in their respective vacation grouping, as well as the names of the individuals designating same, before the parameters are set.

   NOTE: Where the term "local chairperson" is referenced in this section, that is understood to mean the local chairperson or their designee.

B. All employees assigned a vacation under the jurisdiction of SMART-TD will be allowed to designate up to four weeks as single days. Such weeks will provide seven (7) days per week for all classes of service under the jurisdiction of SMART-TD.

C. Scheduled single weeks of vacation that are exhausted prior to the scheduled date may be backfilled.

D. Effective January 1, 2025, employees in all classes of service under the jurisdiction of SMART-TD will not be forced to schedule vacation in January and February. Employees may voluntarily elect to schedule vacation during those months.

E. New hire employees will receive vacation days on the date they mark-up in train service based on the matrix below. Days may be scheduled in Carrier's prearranged layoff system or on demand, as contained in this agreement. Unused days not scheduled by December 31st will be banked in accordance with the provisions of Article II, A of the August 1, 2023, Time Off for Illness and Wellness Agreement between Union Pacific Railroad and SMART-TD.

Marked-UP for Train Service Between	Vacation Days Available for Use
January 1st – March 13th	Five (5) Vacation days
March 14th – May 24th	Four (4) Vacation days
May 25th – August 4th	Three (3) Vacation days
August 5th – October 15th	Two (2) Vacation days
October 16th – November 30th	One (1) Vacation Day
December 1st – December 31st	None

F. Employees in all classes of service will not be required to schedule vacation in January and February but may voluntarily elect to do so. The number of vacations allowed per week in a vacation grouping will be determined by dividing the total number of vacation weeks, and dividing by forty-four (44) rounded to the lowest whole number. In instances where the 44-divisor requires additional vacation slots during a week(s), the local chairman and the Carrier officer designated to administer vacations will select the week(s) in which the additional slots are placed.

Example 1: There are two hundred and ten (210) vacation weeks to be scheduled in the year. The base parameter average using the 44-week divisor is four (4) per week (210/44 = 4.772). The .772 fraction equals thirty-four (34) weeks that will allow five (5) off for vacation (.772 X 44 = 34). The Local Chairperson will advise the Carrier officer designated to administer vacation scheduling of the thirty-four (34) weeks that the parameter will be adjusted to five (5) per week, with the remaining ten (10) weeks being allotted four (4) per week.

Example 2: There are three hundred and forty-seven (347) vacation weeks to be scheduled in the year. The base parameter average using the 44-week divisor is seven (7) per week (347/44 = 7.8863). The .8863 fraction equals thirty-nine (39) weeks that will allow eight (8) off for vacation (.8863 X 44 = 39), with the remaining five (5) weeks allotted seven (7) per week.

Example 3: There are two hundred and sixteen (216) vacation weeks to be scheduled in the year. The base parameter average using the 44-week divisor is four (4) per week (216/44 = 4.9). The .9 fraction equals forty (40) weeks that will allow five (5) off for vacation (.9 X 44 = 39.6), with the remaining four (4) weeks allotted four (4) per week.

Example 4: There are two hundred and twenty (220) vacation weeks to be scheduled in the year. The base parameter average using the 44-week divisor is five (5) per week (220/44 = 5). Five (5) will be allotted for vacation in each of the forty-four weeks.

G. It is recognized by the parties that smaller vacation groups (i.e. those with less than 100 weeks to schedule) present unique scheduling challenges not served by the above parameters. Accordingly, the applicable Local Chairperson and the Carrier officer designated to administer vacation scheduling will confer and agree on the vacation schedule for such groups. If they cannot agree, the matter will be subject to discussion and resolution between the General Chairperson and the Director of Labor Relations.

H. Regardless of the total amount of weeks to be scheduled for any vacation grouping, the Carrier officer designated to administer vacation scheduling will confer with the Local Chairperson on the date vacations will be scheduled and will then place the Local Chairperson in the company business status and given adequate time, but no less than three (3) days to schedule the vacations prior to December 21st.

I. Employees dismissed from service and who are reinstated by the Carrier, or a tribunal, may buy back vacation which was paid out upon their dismissal for use in the applicable year or, be provided the equivalent vacation time they had remaining for use in the applicable year without pay.

J. Effective January 1, 2025, employees in all classes of service under the jurisdiction of SMART-TD will be allowed to advance or defer their vacations to commence on the day following their final trip or scheduled work week. Employees will also be allowed to extend their vacation in an unpaid status for up to seventy-two (72) hours. Such unpaid extensions will not be subject to discipline or be counted against the employee's attendance record.

> NOTE: The unpaid extension of vacation by employees assigned to a guaranteed board will not result in the forfeiture of guarantee. Such employees will have their guarantee reduced by the 1/11th prorated rate for each twenty-four (24) hour period.

K. An employee called to fill a vacation vacancy at an outside point, either single day(s) or weekly vacation, will be paid for the time deadheading to and from the vacancy without regard to whether the vacation vacancy is the first or last vacation day of the year. All intermediate vacation vacancies will be subject to deadhead pay, either separate or combined in accordance with Article VI of the 1985 UTU National Agreement.

Article VII: Personal Leave Days

A. All employees, regardless of craft or class of service and seniority, will be provided eleven (11) personal leave days, or more, if provided in future National Agreements or Crew Consist Agreements, per calendar year.

Article VIII: Bereavement Leave

A. Bereavement leave will be allowed in the case of death of a trainperson's brother, sister, parents, child, grand parent, grandchild, spouse, spouse's parents, half-brother, half-sister, stepbrother, stepsister, stepparent, stepchild, or legally adopted child and domestic partner relationships which includes the parents, spouses, sons, daughters, step-sons, step-daughters, brothers, step-brothers, sisters, step-sisters, grandchildren, grandparents of an employee's domestic partner.

B. The bereavement leave will not exceed three (3) calendar days, to be observed within thirty (30) days following the date of the death. The days do not need to be used consecutively, but all days must be used within the thirty (30) day period. During bereavement leave, the trainperson will be allowed a minimum basic day's pay at the rate of the last service rendered. Trainpersons taking leave will make arrangements with their supervising officials in the usual manner.

C. If there is a need to extend use beyond the thirty (30) day period, additional supervisor approval is required.

Article IX: Held-Away-From-Home Terminal

A. All trainpersons who are held at the away-from-home terminal will begin pay after twelve (12) hours at the away-from-home terminal measured from the trainperson's tie up time. Held-away time will be paid continuously until the trainperson departs the away from home terminal.

B. The Carrier will make every effort to get trainpersons into the away-from-home terminal before or upon the expiration of their hours of service (See NOTE below). The 12-hour threshold will continue to apply even when a trainperson must observe additional rest under the Federal Hours of Service law.

1. A trainperson called and released at the away-from-home terminal will continue to be on held-away from the trainperson's prior tie-up time until the trainperson departs the away from home terminal.

NOTE: In the event SMART-TD finds that this commitment is not being fulfilled at a particular location, the appropriate SMART-TD General Chairperson shall promptly contact the appropriate Labor Relations Officer, in writing, stating the reasons or circumstances involved. The Director of Labor Relations will promptly schedule a conference between the parties to discuss the matter and seek a resolution. The conference will include the appropriate representatives of SMART-TD and UPRR.

Article X: Away-From-Home Terminal Meals

Effective with this Agreement, all away-from-home terminal meals as established by National Agreement or Local Agreement, will be increased to $25.00 and be subject to any future general wage increase and/or COLAs.

Article XI: Differential Pay

A. Weekend Differential Pay

1. Employees operating in road service bulletined to layover at an away-from-home terminal, or any other assignment that actually lays over at an away-from-home terminal, will earn a trip allowance fixed at $50.00 for starts originating at the home terminal between 12:01 a.m. Friday and 11:59 p.m. Sunday.

2. In all other road service not advertised to layover at an away-from-home terminal, the weekend differential is fixed at $25.00.

3. Employees in other than road service who go on duty between 12:01 a.m. Friday and 11:59 p.m. Sunday will earn a per start allowance fixed at $25.00.

B. Night Differential Pay

1. Employees called between 11:59 p.m. Sunday through 12:01 a.m. Friday will receive a nightly differential of $15.00 per start if called between the hours of 6:00 p.m. through 6:00 a.m.

C. Holiday Differential Pay in Road Service

1. Employees in road service who work holidays, as defined in the National Agreements and in Carrier's attendance policy, will receive an additional basic day.

Note: All differential payments listed in this Article V are subject to future GWI's and COLA's.

Article XII: Overtime

Overtime in all classes of time and service will commence after eight (8) hours on duty.

Article XIII: Rate Progression Applicable to New Employees

A. Such revised rules shall be applicable to all employees who enter train or engine service in any class of service or job classification after the date of this agreement:

1. Rates of pay, additives, and other applicable elements of the compensation for new hire employees, after completion of training, will be 100% of the applicable full rate.

2. Rules in effect regarding rate progression adjustment upon promotion to conductor/foreman or engineer are no longer applicable.

Article XIV : Delayed Lodging

A. Time in excess of thirty (30) minutes waiting for a room after arrival at the lodging facility will be calculated on a per minute basis at the prevailing basic daily rate. This payment will be separate and apart from the service trip and will be paid above and beyond all earnings and guarantee.

B. Employees will continue to contact Crew Management Services to report the circumstances causing the delay and to have their rest adjusted in compliance with existing Federal Hours of Service Laws. Time claims submitted will include the following:

- The time of arrival at the lodging facility.
- The name of hotel staff member involved.
- The time a room was provided.

C. This payment will not apply in circumstances beyond the control of the lodging facility or the Carrier such as, but not limited to, fire, Acts of God and/or sudden failures to systems involving temperature controls, water, etc., making the facility uninhabitable. However, if an employee is moved to a secondary lodging facility because of circumstances beyond the control of the lodging facility or the Carrier, a new waiting period will begin after the trainman arrives at the secondary lodging facility.

D. This payment will not apply in instances where an employee rejects a suitable room due to personal preferences.

Article XV Certification Allowance

A. Effective with this Agreement, trainperson's Certification Allowance, as established by Article V of the UTU National Agreement dated September 16, 2011, will be increased to $20.00 for each start on a position covered by SMART TD that requires the employee assigned to have a current FRA certification. Such allowance is subject to any future general wage increase(s) and/or COLAs.

B. Effective with this Agreement, the remote-control special allowance, as established by the Remote-Control Agreement, dated August 20, 2002, will be increased to two (2) hours at the straight time hourly rate of the applicable position in addition to all other earnings. Such allowance is subject to any future general wage increase(s) and /or COLAs.

Article XVI: Miscellaneous

A. The Automatic Mark-Up Interpretation, dated August 20, 2002, and corresponding Side Letters remain intact and unaffected by the terms and conditions of this Agreement.

B. Payments provided in the Articles above will not be used to offset guarantees. Any agreement provisions that allow penalty and arbitrary payments to be used to offset guarantees are hereby eliminated.

C. Except as specifically set forth herein, no other Agreement rules, practices, or interpretations are changed by the terms of this Agreement. In the event there is a conflict, the terms of this Agreement will prevail.

AGREED, this ______ day of ___________ 2024.

FOR THE ORGANIZATION:

____
Roy Davis, General Chairperson

____
Luke Edington, General Chairperson

____
Scott Chelette, General Chairperson

____
Todd Campbell, General Chairperson

____
Joe Cornelius, Jr., General Chairperson

FOR THE CARRIER:

____
Jennifer Powell, Labor Relations
General Director

____
Maqui Parkerson, Labor Relations
Vice President

Side letter #1

Month, Day, 2025

Ms. Maquiling Parkerson
VP Labor Relations
Union Pacific Railroad Company
1400 Douglas Street, Room 710
Omaha, NE 68179

Dear Ms. Parkerson:

This will confirm our understanding with respect to the parties agreed upon terms, conditions, and implementation of the Automated Bid Scheduling (ABS) process. Due to the programming requirements needed to fully implement the agreed upon provisions below, the parties agree to delay implementation of these provisions for a period of twenty-four (24) months from the effective date of this Agreement. The Carrier will dedicate the necessary resources needed to complete the programming within the twenty-four (24) month period. The parties will meet, at minimum, each quarter to review progress and resolve any issues that may arise during the development and implementation process.

<u>Automated Bid Scheduling</u>

Scheduling agreements, schedule rules and agreements covering assignments and vacancies for conductors, trainmen and yardmen are changed, and/or standardized, as follows:

<u>Permanent Bid System</u>

A. Existing service (e.g., pool service, extra boards, assigned jobs, etc.) will not be advertised.

B. New assignments (other than increases to pool freight and extra boards) will be advertised. The senior applicant will be assigned at the time the bulletin closes, which will be 10:00 a.m. CST. An assignment that has been changed under the provisions below will be advertised as a new assignment. Advertisements will be posted for three days (defined as three (3) twenty-four (24) hour periods) with the exception that advertisements will not be bulletined to close on holidays. Any advertisement that would be scheduled to close on a holiday will be extended to close the day following the holiday.

C. Trainmen wishing to bid on new or existing assignments must update their permanent bid to indicate such. New and/or existing assignments will not take effect until the date the bulletin is closed and awarded.

   1. New bulletins will include information as to: nature and/or class of service, territorial limits of assignment, on-duty time, layover days, layover point, and home terminal. Bulletins for local freight service will also include information regarding the number of trips to be made per day and between what points (if required under controlling agreements). Bulletins for pool or irregular freight service will not include on duty time or layover days (unless applicable).

   2. Assigned road service (i.e., locals, road switchers, work trains, etc.) will be re-bulletined (subject to the provisions above) in all instances when the bulletined limits of the assignment are changed; change in class of service; the service is changed from straightaway to turnaround or vice-versa; a starting time is changed by two (2) hours or

more; or if on and off duty points, layover points, or days on which service is to be performed are changed.

3. Assigned yard service will be re-bulletined when on and off duty points or rest days are changed, change in rate of pay, or starting time of assigned jobs are changed.

4. When an extra yard assignment has been run for more than three (3) consecutive days in any rolling seven (7) day period the job must be advertised and assigned in accordance with the prevailing CBA.

   NOTE: The extra yard assignments notated above do not need to be run on the same shift or starting time to be counted.

5. Incumbents of assignments re-advertised pursuant to Sections C (l), C (2), and C (3) above may continue to work on the assignment during the period the new assignment is being advertised.

6. A trainperson absent from service during the bulletined period of a new assignment will be permitted to take such assignment upon return to duty, provided they update their permanent bid sheet accordingly, do so within twenty-four (24) hours of marking up, their seniority entitles them to the assignment, and barring any hold-down provisions or other agreement provisions governing that assignment.

7. A trainperson who gets displaced (bumped) during the period an assignment is under bulletin may be permitted to take such assignment provided their bid sheets are properly updated and they are senior to the trainperson filling such job during the bulletin period. Trainpersons who exercise this right must work one tour of duty prior to bidding on another assignment.

D. Assignment of trainpersons to permanent vacancies shall be made by UPRR's permanent bid system. A list of all assignments at each terminal (including outlying assignments) will be made available via the permanent bid system. Any trainperson holding seniority as a trainperson may list any trainperson jobs on their seniority district(s) on their trainperson bid sheet.

1. The permanent bid system will run daily so that any job changes will become effective, and trainperson will be placed on those new assignments at 10:00 a.m. CST. Trainpersons will receive courtesy notification of such changes but will be deemed notified at 'the time of the 10:00 a.m. CST assignment change. If trainpersons are on duty, on FRA mandated rest, on assigned rest days (or days off) of the previous assignment, or laid off, they will be deemed notified upon tie-up, upon becoming rested, and/or upon completion of rest days or markup from lay off.

2. If trainpersons are on duty, on FRA mandated rest, on assigned rest days (or days off) of the previous assignment or laid off at the time a job change becomes effective, their new job will become effective at the time the trainman takes notification, becomes FRA rested, and/or upon completion of rest days or markup from lay off, whichever is earlier. At that time the trainperson will be moved to the pool or extra board and begin working their way up the service board.

E. A job selection option will be made available to trainpersons that will permit them to indicate their preference of assignment(s), in the order of their preference choices. This order of preference will be known as the "permanent bid" sheet. A permanent bid sheet may be updated at any time and will be used in placing trainpersons in the event they are displaced and/or as permanent vacancies occur. The placement of trainpersons who are on duty or laid off, or otherwise unavailable (i.e., on assigned rest days of the previous assignment) at the time job selection occurs, will become effective upon completion of their tours of duty or upon becoming available (i.e., them becoming federally rested or at the end of their assigned rest days, or upon marking up).

NOTE: Ground service permanent bids will remain intact but will not be considered when any employee is in engine service (subject to Ebb and Flow rules).

1. A trainperson displaced from a run or assignment by a senior trainperson in accordance with schedule rules and/or agreements, or by board adjustments, will be assigned to another assignment consistent with their permanent bid sheet.

2. Should an employee not exercise seniority within twenty-four hours after being properly notified, their permanent bid sheet is blank, or they do not have the seniority to hold any of their choices, they will be placed in the following order:

   a) Vacant (no bid) assignment from the same source of supply and the same class of service at the location displaced.
   b) Vacant (no bid) assignment within the terminal.
   c) Protecting extra board, seniority permitting.
   d) Displace the junior employee in the terminal.
   e) Handled in accordance with the controlling agreement (stay at home, AWTS, furlough, etc.).

3. If a position goes no bid, Crew Management will fill the position in the following manner:

   a) An employee whose bump has expired from the **same** class of service within terminal.
   b) An employee whose bump has expired from a **different** class of service within terminal.
   c) Junior most employee working the protecting extra-board.
   d) An employee whose bump has expired from the next closest terminal via highway miles.
   e) Junior most employee working the next closest extra-board via highway miles.

   NOTE 1: This section does not apply to vacant or no bid extra-board positions.
   NOTE 2: This will not change the demarcation between road and yard service.

4. If there is a need for additional manpower at a location and a surplus is available at another location within the seniority district, the Carrier may equalize manpower between the locations in the following order:

   I. Manpower bulletin.

      a) Auto mileage to and from location.
      b) Travel time to and from location.
      c) Lodging and meals or straight per diem at the current maximum IRS rates.
      d) Basic day per day in addition to guarantee for each day assigned at the location.

II. Force employees from nearest buffer boards (AWTS, etc.).

a) Auto mileage to and from location.
b) Travel time to and from location.
c) Lodging and meals or straight per diem at the current maximum IRS rates.
d) All earnings will be paid over and above guarantee.

III. Force employees from the nearest surplus extra-board.

a) Auto mileage to and from location.
b) Travel time to and from location.
c) Lodging and meals or straight per diem at the current maximum IRS rates.
d) All earnings will be paid over and above guarantee.

5. A turn added to an existing through freight pool or extra board will be considered an additional assignment, and it will be assigned to the senior trainperson showing preference for the pool or extra board on their permanent bid sheet.

6. Trainpersons will not be allowed to move from one turn to another within the same pool unless a new turn is added or they "swap" turns as provided in Article I, 8., above. Trainpersons will be allowed to revert to the extra board or pool from a regular assignment but must then protect the extra board or pool for at least one start prior to moving to any other assignment. Trainpersons will not be allowed to move from one extra board to another extra board within the same class of service within the same terminal without protecting at least one start on the previous extra board.

7. A trainperson returning from a known vacancy of fifteen (15) days or more, excluding compensated leave, will be permitted to take the run/assignment of their choice, provided (l) they update their permanent bid sheet prior to their return to duty, and (2) their seniority entitles them to such run/assignment.

   a. A trainperson displacing into through freight or extra board service will first be placed to an open turn; if none, they will displace the junior trainperson on the desired pool/extra board.

8. If the number of pool or extra board turns is reduced, the junior trainpersons on that board will be removed and will be immediately assigned to the next highest position on their permanent bid sheet, seniority permitting. Extra boards will be reduced in accordance with Article II, A., 1., b. above.

9. In the absence of a bid for a permanent vacancy or new assignment, the position will be filled by the junior trainperson in the same class of service at the terminal. When an employee is force assigned, they may at that time give notice of their desire to be relieved when a junior qualified employee becomes available at the same terminal, in the same class of service. It will be the obligation of the force assigned employee to notify the Carrier within forty-eight (48) hours of a junior employee becoming available; or within forty-eight (48) hours of returning from rest days or an approved layoff; or remained force assigned.

When the junior employee becomes available, the employee who had been force assigned and provided notice to the Carrier, will be released from the assignment and the junior employee will be placed on the vacancy. The employee released will have their permanent bid sheet run and be placed in accordance with Paragraph D above. Alternatively, a force assigned employee has the right to bid to another assignment, seniority permitting, unless not allowed under existing agreements.

F. Employees who are assigned by application or forced due to lack of seniority will be handled as follows:

1. Employees placed on an assignment within the same terminal of their previous assignment, or an assignment less than one hundred (100) miles from previous assignment, will be placed on said assignment in an "OK" status once properly notified.

2. Employees placed on an assignment greater than one hundred (100) miles and not more than one hundred ninety-nine (199) miles from their previous assignment must report within forty-eight (48) hours after proper notification by Crew Management.

3. Employees placed on an assignment greater than two hundred (200) miles from their previous assignment must report within ninety-six (96) hours after proper notification by Crew Management.

NOTE: Mileage will be calculated using google maps and measured from the employees residence to the reporting location.

G. Known vacancies of fifteen (15) days or more, excluding compensated time off (vacation and/or personal leave, etc.) will be considered permanent vacancies and will be assigned to the senior trainperson showing the assignment on their permanent bid sheet.

H. Vacancies other than permanent vacancies (e.g., single day layoffs, layoffs less than fifteen (15) days, etc.) will be filled under the prevailing collective bargaining agreements.

I. All trainpersons who have held the same assignment for a minimum of thirty (30) days are entitled to a thirty (30) day bump. Thirty (30) day bumps may be requested at any time of day but will not be executed until the next job assignment change time (e.g., 10:00 a.m. CST) as outlined above.

Please acknowledge your agreement by signing in the space below.

Sincerely,

Roy Davis General Chairperson	Luke Edington General Chairperson	Todd Campbell General Chairperson
Scott Chelette General Chairperson	Joe Cornelius Jr. General Chairperson	

I agree:

Maquiling Parkerson – VP Labor Relations

Side letter #2

Month, Day, 2025

Ms. Maquiling Parkerson
VP Labor Relations
Union Pacific Railroad Company
1400 Douglas Street, Room 710
Omaha, NE 68179

Dear Ms. Parkerson:

This will confirm our understanding that the Carrier is barred from implementing any unilateral change to existing pools, extra boards, and supplemental extra boards that were established under the controlling Crew Consist and/or the DFW/San Antonio/Longview and Houston Hub Merger Implementing Agreements on the T&P and IGN properties. This includes, but is not limited to; pay elements, board regulation, establishment/combining/abolishment of road, yard, road/yard combination and/or supplemental extra boards and the regulation thereof. Following the effective date of this Agreement, pools and extra Boards on these properties may only be altered or modified by mutual agreement between the parties.

Please acknowledge your agreement by signing in the space below.

Sincerely,

Roy Davis General Chairperson	Luke Edington General Chairperson	Todd Campbell General Chairperson
Scott Chelette General Chairperson	Joe Cornelius Jr. General Chairperson	

I agree:

Maquiling Parkerson – VP Labor Relations

Side letter #3

Month, Day, 2024

Ms. Maquiling Parkerson
VP Labor Relations
Union Pacific Railroad Company
1400 Douglas Street, Room 710
Omaha, NE 68179

Dear Ms. Parkerson:

This will confirm our understanding with respect to the parties agreed upon terms, conditions, and implementation of a Ready Work Board (Buffer Board).

<u>Ready Work Board</u>

A. The number of ready work board protected positions (referred to as "slots") will be equivalent to the total number of all extra board positions (yard and road) at each location on the date of this agreement.

B. An equal number of employees involuntarily furloughed 30 days prior to, and up to thirty (30) years following the implementation of Articles V-VII of Public Law 117-216, and a seniority date prior to the date of this agreement, may fill slots established in Section A in seniority order. When positions are needed on the Ready Work Board, slots will be filled through application first, followed by trainpersons who would otherwise be furloughed, in seniority order. Employees who are furloughed or whose service is not needed at another location within their seniority territory after the implementation of Articles V-VII will be placed on this ready work board in seniority order, after active employees who submit application.

1. Employees awarded a position to the Ready Work Board must remain on the board a minimum of 120 days and may not be displaced, unless a more senior employee is reduced and would otherwise be furloughed or removed from the board upon recall by the Carrier.

2. Employees awarded a position to the Ready Work Board that bid off after the 120-day minimum, will not be allowed to place on a subsequent Ready Work Board position until after working 120 days in active service, unless they are the junior employee subject to furlough.

C. Such employees will receive 85% of the brakeman's guarantee rate (XK board), subject to general wage increases and cost of living increases until recalled.

D. Employees on the Ready Work Board retain the right to lay off, use personal leave, and take scheduled vacations as provided for in current agreement rules. Personal leave and vacation pay will offset guarantee. Employes laying off for other than paid absence will have their Ready Work Board guarantee pay reduced for each 24-hour period they are laid off.

E. Employees on Ready Work Boards must maintain their work certifications and/or proficiencies while in such status, by successfully completing any retraining or refresher programs required of active employees to maintain those proficiencies which may include the passing of tests or examinations (including physical examinations) to receive this guarantee.

F. Employees assigned to a Ready Work Board may be called to fill vacancies once all vacancy procedures have been exhausted.

G. At noon each day, the first out employee assigned to this board will be placed at the bottom of the board.

H. Trainmen assigned to this Ready Work Board will not be eligible for placement to an AWTS, CRTB or other similar boards.

I. Trainmen assigned to the Ready Work Board are subject to recall in reverse seniority order and must accept recall within (48) hours of notification. This board will be recalled ahead of trainmen assigned to AWTS, CRTB, or other similar boards.

1. In the event an employee cannot be immediately contacted, proper notification will be considered as having been accomplished eight (8) hours from the time CMS calls all contact numbers listed in the employee's personal file in CMTS, one time each and leaving a message if possible. Such attempts will be documented in the employee's work history, as well as CMS' placing an electronic message in the employee's CMTS screen or portal. CMS actually speaking with the employee, receiving a call back from the employee, or the employee's acknowledgment will not be necessary to satisfy this requirement.

   NOTE: Alternative electronic methods of contact (i.e. phone text, portal message, et.al.), may be used in lieu of phone contact and considered as proper notification pursuant to this paragraph. It is understood employees may accept notification prior to the (eight) 8-hour period referred to above.

2. Should an employee not report within forty-eight (48) hours, protective benefits will stop, and he or she will be furloughed.

   i. The first time an employee fails to report in accordance with Section 2 above, the employee will not be recalled until all employees assigned to the Ready Work Board have been recalled.

ii. If an employee fails to report in accordance with Section 2 above for a second time, the employee will forfeit any rights to the Ready Work Board.

iii. If any dispute arises regarding this Section H, it will be addressed between the General Chairperson and Director of Labor Relations.

F. Ready Work Board payments will be considered as compensable service in determining the compensation due for vacation in succeeding years. Time spent on a ready work board will not count toward determining whether the employee is eligible for vacation in succeeding years but will count in determining the length of vacation to which an employee, otherwise eligible, is entitled. If an employee assigned to a Ready Work Board fills a vacancy in accordance with Section E, the miles earned from working that vacancy will count toward vacation eligibility the following year.

G. Employees on the Ready Work Board are covered by Health and Welfare Plans, Union Shop, Dues Checkoff, Discipline Rules and the Grievance Procedures that are applicable to employees in active service.

H. The wage protection identified in this Article may be suspended by Carrier upon an act of God, war or other unforeseeable event that suspends Carrier's operations in whole or part for more than a 30-calendar day period.

I. There will be no duplication of protective benefits for any employee covered by this Agreement.

Please acknowledge your agreement by signing in the space below.

Sincerely,

________________ Roy Davis General Chairperson	________________ Luke Edington General Chairperson	________________ Todd Campbell General Chairperson
________________ Scott Chelette General Chairperson	________________ Joe Cornelius Jr. General Chairperson	

I agree:

____

Maquiling Parkerson – VP Labor Relations

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SMART TD WITNESSES

SMART TD – President Jeremy Ferguson

SMART TD – General Chairperson Roy Davis

SMART TD – Vice General Chairperson Charles Piland

SMART TD – Sr Vice General Chairperson Kurt Christensen

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July 25, 2024

Via email only

Ms. Maquiling Parkerson
VP Labor Relations & Sustainability
Union Pacific Railroad Company
1400 Douglas Street, Room 710
Omaha, NE 68179

RE: SMART TD REQUEST FOR ARBITRATION

Dear Ms. Parkerson:

This letter shall serve as the Organization's notice, as required in Articles V, VI and VII – of Public Law No. 117-216, to establish final and binding, party-paid interest arbitration.

Voluntary negotiations over the above referenced articles started in January of 2023, with formal negotiations over Article V, starting December 28, 2023, and Articles VI and VII, starting January 15, 2024, after proper notices were sent to the other party. Since that time, we had numerous negotiation sessions which, have resulted in an impasse. Therefore, as directed by Public Law No. 117-216, we now request the issue be resolved by party pay interest arbitration.

Please let us know your availability to discuss the choosing of a mutually agreed to arbitrator for this issue.

Sincerely,

Roy Davis
Roy Davis
General Chairperson
GO-577

Luke Edington
Luke Edington
General Chairperson
GO-953

William Campbell
William Campbell
General Chairperson
GO-887

Scott Chelette
Scott Chelette
General Chairperson
GO-927

Joe Cornelius Jr.
Joe Cornelius Jr.
General Chairperson
GO-569

(Rule 71 was modified effective August 1, 1989. The new version follows:)

RULE 71. CREWS REQUIRING REST. (a) Conductors and brakemen will not be required to out when they need rest, and will decide for themselves. Regular employes, as well as extra conductors and brakemen, may tie up for rest in excess of that required by the Hours of Service Act not to exceed an aggregate of 24 hours. Individual employes must request extra rest at time of tie-up and they may not request additional rest after they tie-up. All requested rest must be taken.

When extra conductors or brakemen tie-up for extra rest, they will be placed at the foot of the extra board at the expiration of all requested rest.

(b) When a crew has been on duty over 8 hours, one member may tie-up the crew for 8 hours, two members for 10 hours, and three members not to exceed 12 hours. However, if the crew is operating as a reduced crew, then both crew members may tie crew up not to exceed 12 hours.

RULE 71. CREWS REQUIRING REST. Conductors and brakemen will not be required to go out when they need rest, and will decide for themselves. When crew has been on duty over 8 hours, one member may tie up the crew for 8 hours, two members for 10 hours, and three members not to exceed 12 hours.