EXHIBIT 7

BEFORE AN INTEREST ARBITRATION BOARD

Between

Union Pacific Railroad Company

And Its Employees
Represented By
International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division

National Mediation Board Case No. 1208

CARRIER'S SUBMISSION

January 2, 2025

TABLE OF CONTENTS

INTRODUCTION 1

FACTUAL BACKGROUND 7

A. The Parties 7

B. Types of Train Operations 8

C. Yard and Local Jobs 9

D. Road Service Jobs 10

E. Rest and Time Off for Road Service Employees 11

F. Filling Vacancies in Road Service 13

1. Extra Boards 13

2. Waiting Turn 16

3. Rules for Filling Longer-Term Vacancies 17

G. Regulating the Size of Pools 18

H. Previous Efforts to Negotiate More Efficient Scheduling and Assignment Rules . 20

I. The 2020 National Bargaining Round 22

1. The Parties' Section 6 Notices 23

2. Proposals Exchanged During Bargaining 23

3. The Parties' Positions Before PEB 250 24

4. PEB 250's Report and Recommendations 25

5. Post-PEB 250 Negotiations Over the National Agreement 26

J. Local Bargaining Over Articles V, VI, and VII 28

CARRIER'S PROPOSAL 31

CARRIER WITNESSES 35

1. Doug Svatos 35

2. Grant Janke 35

3. Jennifer Powell 35

4. Brendan Branon 35

ARGUMENT 36

I. THE BOARD SHOULD IMPOSE NARROWLY-CRAFTED TERMS 37

A. The Issue Before the Board is Restricted to Implementation of the Specified Rules in Articles V, VI, and VII 37

B. Union Pacific's Proposal is Limited to Issues of Implementation 40

II. THE BOARD SHOULD IMPOSE EQUITABLE TERMS 45

A. The Parties to the National Agreement Intended to Provide For an Equal Exchange of Value 47

B. Union Pacific's Proposal Reflects an Equal Exchange 50

1. The Cost of Rest Days Under Article V 51

2. Savings From Bidding, Assignment and Regulation Rules 52

C. The Union's Proposal is Not an Equal Exchange 55

1. The Union's December 28, 2023 Proposal 55

2. The Union's June 14, 2024 Proposal 57

III. THE BOARD SHOULD IMPOSE WORKABLE TERMS 58

A. Work-Rest for Pool Service 59

B. Work-Rest for Extra Boards 61

C. Standing Bid 62

D. The Union's Proposed Terms Are Not Workable 63

IV. THE OTHER CARRIERS' AGREEMENTS ARE NOT APPROPRIATE MODELS 64

A. Reliance on Other Carrier Agreements is Inherently Inconsistent With the Design and Intent of Articles V, VI, and VII 64

B. All of the Other Carrier Agreements Are Distinguishable as Voluntary Settlements 66

C. The Norfolk Southern Agreement is Not Appropriate For Union Pacific 67

D. The BNSF Agreement is Not Appropriate For Union Pacific 70

V. THERE IS NO MERIT TO THE UNION'S OTHER ARGUMENTS 72

A. There is No Bar to Changes on the Former International Great Northern and Texas & Pacific Properties 72

B. The Parties Have Engaged in Sufficient Bargaining 74

CONCLUSION 77

TABLE OF AUTHORITIES

Page

CASES

Elgin, Joliet. & Eastern R. Co. v. Burley,
325 U.S. 711 (1945)..7

Kerber v. Qwest Grp. Life Ins. Plan,
647 F.3d 950 (10th Cir. 2011) 56

Whitman v. Am. Trucking Ass'ns,
531 U.S. 457 (2001)..56

ARBITRATION AWARDS

Bethlehem Steel Corp. v. United Steelworkers of America,
(1996) (Bloch, Arb.)………………………...…………………………………...……76

Canadian Pacific Kansas City Railway Company v. Brotherhood of Locomotive Engineers and Trainmen,
(Oct. 14, 2024) (Moreland, Arb.)……………………………..….……...…3, 39, 49, 67

Canadian Pacific Kansas City Railway Company v. Brotherhood of Locomotive Engineers and Trainmen,
(Nov. 15, 2024) (Moreland, Arb.) ……………………………..….………..….…….39

Chicago & North Western Transportation Co. v. United Transportation Union,
Arb. Bd. No. 490 (1988) (Zumas, Arb.) ……………………………….…………….....37

City of Highland Park,
134 BNA LA 581 (2014) (Goldstein, Arb.)..45

Elk Electric Inc.,
2012 WL 10236540 (2012) (Williams, Arb.) ……………………………………...46

Globe Newspaper Co., Inc.,
2008 WL 6045841 (2008) (Bornstein, Arb.)…………………………..…………...…46

NCCC v. BMWED & SMART-MD,
Arb. Bd. No. 602 (2018) (Vernon, Arb.) ……………………………………...….….37

New York Shipping Ass'n,
36 LA 44, 45 (1960) (Stein, Arb.)……………………………………….……………….……...45

North Central Community Service Program Board,
Decision No. 30265-A (2002) (Michelstetter, II, Arb.)……………………………….....46

SMART-TD v. CSXT,
PLB No. 7700, Award 3 (2017) (Zusman, Arb.) 62

Twin City Rapid Transit Co.,
7 LA 845, 848 (1947) (McCoy, Freeman, & Goldie, Arbs.)………...……….……..…..45

UTU v. Union Pacific R.R.,
SBA No. 18, Award 5503 (1983) (Vernon, Arb.) 62

Village of Greendale,
Decision No. 30432-A (2003) (Krinsky, Arb.)……………….…………………….……...45

Village of Sparta, Ill.,
130 BNA LA 1086 (2012) (Betts, Arb.) …………………………………...…………76

Washington Cty. Deputy Sheriff's Ass'n.,
1999 BNA LA Supp. 109523 (1999) (Flaten, Arb.)………………...…….………..……46

STATUTES

49 U.S.C.
§ 11101(a) 8
§ 21103 11

Rail Safety Improvement Act of 2008
49 U.S.C. §§ 20101 et seq……………………………………………………...12, 19, 21

Hours of Service Act
49 U.S.C. §§ 21101 et seq……………………………………………...……..11, 52

OTHER AUTHORITIES

17 Am. Jur. 2d Contracts § 489 (2024)...74

Elkouri & Elkouri*, How Arbitration Works*
(6th ed. 2003) …………………………………………………..……..….37, 45
(8th ed. 2024)………………………………………………………...………...58

Elliott on Contracts, § 1869 74

Page on Contracts (1st Ed.), § 1340..74

Report of Presidential Emergency Board No. 182 (Oct. 10, 1973) 46

Report of Presidential Emergency Board No. 242 (Dec. 30, 2007) 62

Report of Presidential Emergency Board No. 243 (Nov. 5, 2011) 45, 46

Report of Presidential Emergency Board No. 250 (Aug. 16, 2022) .... *passim*

Soule, *Wage Arbitration*
6–7 (1928) ……………………………………………………..…..……………58

Williston on Contracts, §§ 723 and 926..74

INTRODUCTION

For decades, scheduling and assignment procedures for train crews have been one of the most complex, contentious, and confounding issues in railroad collective bargaining. The root of the problem is the nature of railroading itself. In order to compete with trucks and other transportation modes, Union Pacific Railroad ("Union Pacific") must operate 24-7, 365 days a year, and typically cannot adhere to strict timetables. Thus, at least in "thru-freight" operations – the long trips between terminals – crews may be called to work at unpredictable times. Union Pacific and its employees must also contend with a complicated regulatory regime that limits how long employees can work on a daily, weekly, and monthly basis. In addition, dozens of old collective bargaining agreements – vestiges of a by-gone era when railroading was very different – remain in place and further complicate scheduling and assignments.

The problem is also exacerbated by the inherent tension between the interests of the parties. Thru-freight train crew employees represented by the International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division ("SMART-TD") want adequate amounts of time off, but also want both predictability and the right to control when they take time off, even if it impacts train operations. Union Pacific, by contrast, wants to have sufficient crews available to provide service to its customers, which means that crews need to be available to work when they are not off duty. Union Pacific also wants to maintain reasonable labor costs and to ensure that, to the extent possible, it is paying its employees to work, not for time that they are unavailable or for other non-work time.

Union Pacific and SMART-TD also disagree about how much thru-freight train crew employees are, in fact, actually working. SMART-TD has, for many years, maintained that its members are overworked, fatigued, and unable to maintain a viable home life. Union Pacific recognizes that train crew jobs are challenging – especially because they require regular travel and because employees must be on-call to report when needed – but does not see any empirical support for the notion that trainpersons are overworked. To the contrary, thru-freight trainpersons average fewer actual work hours per week and per year than most American workers.

In any event, while they strongly disagree about many things, Union Pacific and SMART-TD do at least agree that existing rules are inadequate and need to be changed. And, after many years of failed efforts to grapple with this problem, the parties finally had a breakthrough. In late 2022, President Biden appointed Emergency Board No. 250 ("PEB 250") to make recommendations for settlement of a collective bargaining dispute between all of the major railroads and rail unions. The Board – in addition to recommending historic wage increases and the continuation of platinum-level health care benefits – adopted the railroads' proposal for a final and binding process to resolve the parties' long-standing dispute over scheduling and assignments for thru-freight employees. That recommendation was incorporated into a 2022 National Agreement between SMART-TD and the major railroads, including Union Pacific. Articles V, VI, and VII of that Agreement require negotiation and, if need be, interest arbitration, in order to implement detailed and interwoven rules regarding (1) rest days, (2) assignment procedures, and (3) staffing of thru-freight trains.

Under Articles V, VI, and VII, the issue before this Board is "whether and how" to implement those specific rules.[1] To resolve that question, this Board should be guided by three fundamental principles.

First, the terms imposed by the Board must be narrowly limited to implementation of the particular rules identified in Articles V, VI, and VII. Both the language of the National Agreement and the bargaining history of the relevant provisions demonstrate that the parties contemplated a limited trade: assigned rest days in exchange for new bidding and staffing rules. There is no indication that the parties intended to allow either side to demand unrelated changes in other areas – such as compensation or paid leave – as part of this process. In the only other interest arbitrations thus far under the 2022 National Agreement, the board expressly held that Articles V, VI, and VII set forth "narrowly fashioned parameters" and a "short list of pre-determined issues."[2] It therefore rejected the union's attempt to interject demands that went well beyond implementation of the terms specified in the three Articles.

In this case, Union Pacific's proposal is limited to implementing the specific rules identified in Articles V, VI, and VII. By contrast, SMART-TD has maintained a laundry list of demands – including more pay, more paid leave, and other benefits – unrelated to rest days, assignment procedures, and staffing. *See infra* 40 - 44.

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[1] Ex. 1 (2022 National Agreement) at Arts. V, VI, & VII; *see also* Ex. 2 (Sept. 16, 2024 Arbitration Agreement) at ¶ 1 (providing that "[t]his Board shall have jurisdiction only over changes necessary to implement the rules referenced in Articles V, VI, and VII of the National Agreement.").

[2] *E.g.*, Ex. 3 (*Canadian Pacific Kansas City Ry. Co. v. B'hd of Locomotive Engineers and Trainmen*, Arbitration Award (Oct. 14, 2024) (Moreland, Arb.) ("CPKC Award") at 8-9, 11.

Second, the Board should impose terms that reflect a balanced trade of value for value. Labor agreements – whether reached through bargaining or arbitration – are always an exchange of *quid pro quos*. In this case, the terms of Article V, VI, and VII derive from a carrier proposal before PEB 250, which expressly contemplated a swap of assigned rest days for new efficiencies in assignments and scheduling. As PEB 250 itself noted, implementation of these rules is supposed to be a "win-win," whereby employees "obtain preferred schedules with more control over their personal lives" and the carriers obtain "***both operational benefits and <u>cost savings</u>***."[3] In fact, even SMART-TD has argued that implementation of Articles V, VI, and VII must be "equally beneficial" to the parties.[4]

Union Pacific's proposal reflects an even exchange; SMART-TD's demands do not. As detailed in the costing materials attached hereto, Union Pacific's proposed terms would balance the cost of assigned rest days with savings from new assignment and staffing rules.[5] The overall package would tip in favor of the employees, but by a relatively insignificant amount. By contrast, the proposals offered by the union in negotiations would impose somewhere between $200 million and $350 million in new annual costs on Union Pacific.[6] That is not, under any rational conception, a "win-win," "cost savings," or "equally beneficial." *See infra* at 50 - 58.

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[3] Ex. 4 (Report to the President by Emergency Board No. 250 ("PEB 250 Report")) at 35-36 (emphasis added).

[4] Ex. 5 (Jun. 14, 2024 Letter from SMART-TD to Union Pacific) at 2.

[5] Ex. 6 (Union Pacific Costing Analysis).

[6] *Id.*

Third, the terms implementing Articles V, VI, and VII should be workable and easy to administer. Especially when dealing with matters as complex and multi-faceted as thru-freight assignments and scheduling, it can be difficult for an interest arbitration panel – which by definition lacks the parties' day-to-day experience – to craft something that will work in practice. Hence, it is critical to carefully consider whether the new rules will function as expected and whether they will accommodate the key interests of both sides. *See infra* 58 - 63.

In this case, Union Pacific's proposed terms are designed to accomplish those goals. In particular, the railroad's proposed rules for thru-freight "pool" employees will ensure adequate rest, allow for some degree of certainty as to time off, maintain a sufficient supply of crew members to staff the trains (without increasing the need to pay for non-working time), and still provide an opportunity for employees to work if they choose to do so. Similarly, Union Pacific's proposed terms will decrease reliance on the "extra boards" – which require payment of "guarantees" regardless of whether employees work or not – while still allowing opportunities for rest days for the employees on those boards. And the railroad's proposed approach to assignments is undeniably workable, as it would expand an existing "standing bid" rule that is already in place on portions of the Union Pacific network.

By contrast, SMART-TD's proposed terms are not workable and would not provide the necessary operational benefits. To the extent that the union's preferred work/rest schedule has been tried elsewhere, it has significantly impacted operations, requiring the parties to go back to the drawing board.

The contrary arguments offered by SMART-TD during bargaining over these issues are not persuasive and should be rejected by the Board. *First*, the agreements between SMART-TD and other carriers do not provide a viable template in this proceeding. The whole point of Articles V, VI, and VII was to provide for separate procedures so that the parties could reach different agreements tailored to each railroad, and it would run counter to that intent to impose terms designed for other carriers' operations and crew management practices. Moreover, while the other railroads might have been willing to offer extra incentives to reach voluntary agreements, SMART-TD chose not to go down that road here, and Union Pacific is therefore entitled to insist on an agreement limited to implementation, especially when SMART-TD's demands would impose huge costs with no *quid pro quo*.

Second, SMART-TD cannot rely on so-called "moratorium" provisions in old agreements to block implementation of Articles V, VI, and VII. The union agreed to the terms of the 2022 National Agreement with no carve-outs or exceptions. Hence, any pre-existing limits have been modified by agreement.

Third, the parties have already engaged in more than sufficient bargaining. Finger-pointing over why negotiations failed is not productive, and sending the parties back for more fruitless talks would be inappropriate. The parties need a prompt and final conclusion to this process.

For these reasons, all of which are addressed in more detail below, the Board should adopt Union Pacific's proposed agreement terms, a copy of which is attached hereto as Exhibit 7.

FACTUAL BACKGROUND

As both labor arbitrators and courts have often observed, the railroad industry has a number of characteristics that distinguish it from other American industries. *See, e.g., Elgin, J. & Ry. v. Burley*, 325 U.S. 711, 751 (1945) ("From the point of view of industrial relations our railroads are largely a thing apart. . . . 'The railroad world is like a state within a state.'"). In the sections below, we begin by reviewing the unique aspects of railroad operations that are relevant to this case, including the parties' existing collectively-bargained scheduling and assignment rules. We also explain the reasons why those rules – many of which are very old – are inadequate for modern railroading. Next, we turn to the parties' efforts to negotiate new rules. More specifically, we outline the parties' early attempts to reach agreement, the 2020 bargaining round that led to the National Agreement, and the ultimately unsuccessful negotiations between SMART-TD and Union Pacific over implementation of Articles V, VI, and VII.[7]

A. The Parties

Union Pacific operates a complex rail network that spans the western half of the continent, totaling more than 40,000 miles of track in 23 states. It runs hundreds of trains every day, operating 24-7, 365 days a year. These trains are staffed by conductors or trainpersons represented by SMART-TD, as well as locomotive engineers represented by the Brotherhood of Locomotive Engineers and Trainmen ("BLET").

[7] At the hearing, Union Pacific will rely on witness testimony from the witnesses listed herein (*infra* at 35) to establish the facts that are summarized in this submission, as well as the documents that are provided herewith. *See* Ex. 2 (Sept. 16, 2024 Arbitration Agreement) (providing that parties must disclose witnesses and documents on which they intend to rely).

B. Types of Train Operations

The three primary categories of freight rail operations are yard, local, and thru-freight road service. Yard operations generally involve switching rail cars within a designated terminal in order to assemble or disassemble trains and sort freight according to its destination. Local operations (including road switchers) are trains that run from a terminal to a nearby customer's facility, siding or other fixed point, usually returning to the same terminal at the end of a shift. In both yard and local operations, trains do not travel long distances and work schedules are relatively predictable.

Thru-freight road service involves trains that travel long distances between terminals. Thru-freight service is usually unscheduled, and can be unpredictable and highly variable. This is due to several factors. Freight transportation is a derived demand industry – railroads must move freight when it is tendered to them, and do not control when or how much freight must be moved. Indeed, they are required by law to provide transportation services upon reasonable request. 49 U.S.C. § 11101(a). In addition, rail traffic levels rise and fall based on macro-economic conditions, customer operating cycles, factory production levels, ocean vessel arrivals and departures, grain harvests, and so on. Carload variations, weather conditions, track maintenance, accidents, and a multitude of other factors can also alter network movements, delaying not just a single train, but all other trains on the same network. Accordingly, the number of thru-freight trains that will be needed varies from day to day, and their departure and arrival times are likewise subject to change on a daily or hourly basis.

Approximately 60 percent of Union Pacific's trainpersons, about 5,000 employees, work in thru-freight road service. The remaining 40 percent, about 3,000 employees, work in yard and local service.

C. Yard and Local Jobs

Because employees in yard and local service are generally not required to travel long distances or work unpredictable hours, Union Pacific is usually able to staff those jobs using procedures that look a lot like the ones found in other American industries. Thus, for example, yard assignments typically have a defined start time and length of shift. Yard employees report to the same location for each work day, and are able to go home at the end of each shift. Most yard assignments have a standard 5-days on, 2-days off schedule (called a "5/2" in the railroad industry), and have access to various forms of leave (vacation, bereavement, unpaid personal leave, and so on).

Local assignments are similar. They also have scheduled start times and fixed on-duty reporting locations. Local assignments also typically work a 5/2 schedule, although that may vary based on customer needs. Employees working in local service have similar options for time off as employees in yard jobs.

Vacancies in yard and local service – when regularly scheduled employees are unavailable because of vacations or other absences – are filled by an "extra board." All Union Pacific extra boards are "guaranteed," which means that the employees assigned to those boards are assured a minimum monthly income, regardless of how much they work, so long as they are available for service when called. If an extra board employee is not available, his or her monthly guarantee may be reduced or eliminated.

D. Road Service Jobs

Unlike yard and local service, road service is unscheduled and involves longer distances, and so requires a very different approach to scheduling and assignments. Most road service employees are assigned to a "pool." Greatly simplified, a pool is a rotating list of employees (called a "board"). When a train is ready for departure, the employee at the top of the board is called to work, and everyone else moves up one slot. Employees in pool service operate trains from one terminal, called the home terminal, to another terminal, called the away-from-home terminal. When the trip is finished, these employees stay overnight at the away-from-home terminal to rest. Once they are rested, they are called to operate a train back to the home terminal. When they return to the home terminal, employees are typically placed at the bottom of the board, waiting for their next turn.

A road service employee who is "marked up" in the pool – meaning that their name is on the board – is required to be available for service when called. If an employee needs to be unavailable for any reason, he or she will "mark off" or "lay off," meaning that they temporarily remove their name from the board. An employee may, for example, mark off for scheduled leave (e.g., vacation or personal leave) or unscheduled leave (e.g., paid sick leave or bereavement leave).

When pool vacancies occur, they have historically been filled by calling an employee on an extra board. Some extra boards are used primarily for road service vacancies. Others – known as "combination" boards – are used to fill vacancies in either road or yard service (and may work other extra assignments as needed).

Both sides – employees and management – are discontented with certain aspects of these existing procedures for how road service jobs are assigned and staffed. To be sure, the parties have different priorities, but the three main issues are (1) employee rest and time off; (2) filling vacancies, both short-term and long-term; and (3) determining the number of employees who should be assigned to pools.

E. Rest and Time Off for Road Service Employees

The federal Hours of Service Act limits the number of hours that operating craft employees can work and guarantees them a certain amount of time off to rest between trips. Employees may not (a) work more than twelve consecutive hours; (b) go on duty until the employee has had at least ten consecutive hours of undisturbed rest; (c) work for more than six consecutive days; or (d) work more than 276 hours in a month (something that operating craft employees rarely do regardless). *See generally* 49 U.S.C. § 21103.

Aside from the federal limits, employees are also guaranteed time off by agreement. Trainpersons with more than one year of service generally receive anywhere from one to five weeks of paid vacation, depending on seniority, and may also be eligible for paid personal leave days. This paid time off can be taken in weekly blocks, and a portion of it – typically one to two weeks – can be taken in single-day increments throughout the year. In addition, trainpersons can take up to 5 days of paid sick leave. They can also take unpaid leave by marking off for personal reasons. There is no specific limit on such mark-offs. So long as they maintain good overall attendance, pool service employees will not be disciplined for unavailability. Union Pacific's attendance policies are designed to allow for a reasonable number of unscheduled, unpaid absences.

In addition, while trainpersons in road service do not currently have specifically assigned rest days, the parties have negotiated procedures to give employees more control over their schedules. These "Smart Rest" mechanisms – which can be optional or mandatory, depending on which local agreement applies – allow or require employees to take a 23-hour rest period after working 4 or 5 consecutive "starts" (or trips).[8] This avoids the scenario in which an employee would otherwise work six consecutive starts, after which they would be required by law to rest for 48 hours. Twenty-nine of the 218 pools in road service and 60 of 299 extra boards currently have some version of Smart Rest.

Union Pacific has also implemented a pre-arranged layoff system ("PAL"), which allows employees to schedule most forms of paid leave in advance. The carrier allots a certain percentage of slots to each calendar day, and if a leave slot is available, an employee can schedule his leave on that day. Currently, the carrier allows available leave slots equivalent to an average of at least 4 percent of the number of individuals assigned to an extra board plus the number of individuals assigned to pool that the extra board protects.

[8] "Consecutive starts" is defined as a single or continuous trip/tour of duty under the FRA's interpretation of the Hours of Service Laws, as modified by the 2008 Rail Safety Improvement Act (RSIA). Under that interpretation, consecutive trips/tours of duty are initiated back-to-back starts that are not separated by at least a twenty-four (24) hour rest period between the off-duty time of the previous trip/tour of duty and the on-duty time of the next trip/tour of duty. The time encompassed in normal layover/rest time between trips, as well as layoffs (compensated and/or uncompensated) or any other time off (*i.e.*, missed call, no show, etc.) totaling twenty-four (24) hours or more in the aggregate, will serve to reset the consecutive trip counter.

Finally, in certain regions, the parties' agreements permit trainpersons in non-guaranteed pool service to "trade turns" with fellow pool employees, thereby allowing greater schedule flexibility. The current trade turn process is not automated, requiring administration by the carrier's crew management services ("CMS").

These procedures allow road service employees to take considerable time off and manage when they work. Over the last year, trainpersons in unassigned road service (including both pool and extra board) were on duty an average of 28.3 hours per week and 1479 hours per year (not including rest time at the away from home terminals).

F. Filling Vacancies in Road Service

Because thru-freight needs to run 24-7, 365 days a year, every time a trainperson in a road service pool needs time off or is otherwise unavailable, someone else needs to fill in. If no one is available, the train may be delayed, which can lead to ripple effects, delaying other trains across Union Pacific's system (and on other carriers as well). A robust, effective, and efficient system for filling vacancies is, therefore, critical to Union Pacific's ability to service its customers.

1. Extra Boards

When a pool service employee is not available, it would seem like the logical thing to do would be to call the next person on the board. However, as noted above, the parties' existing agreements call for use of a separate "extra board." The primary problem with this approach is that employees assigned to the extra board are often not available for work. In fact, extra board employees often average *less* availability than employees whose vacancies they are supposed to fill:

Comparative Unavailability: Pools Versus Extra Boards

Year	Average Unavailability for Trainpersons Assigned to Freight Pools	Average Unavailability for Trainpersons Assigned to Road Extra Boards
2019	15%	18%
2020	15%	18%
2021	17%	21%
2022	12%	14%
2023	13%	13%
2024	11%	12%

When nobody from the extra board is available to protect the assignment, the carrier must call employees in a specified order. However, employees are generally not required to answer these calls. As a result, the carrier often must call numerous employees to fill a single vacancy, and even then, it is not guaranteed that it will find someone to work the job. This time-consuming process results in entirely preventable train delays and cancellations.

Nor is it possible to solve this problem by just adding more people to the extra board. As this next table shows, crew unavailability on extra boards varies between weekdays and weekends, and is almost always higher on the weekend days (Saturday and Sunday) when rail freight traffic is typically busier and more crews are needed for service:

Trainperson Extra Board Unavailability (Day of Week) 2019-2023

Year	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Average
2019	18%	15%	12%	11%	11%	12%	15%	13%
2020	16%	14%	12%	11%	11%	12%	14%	13%
2021	16%	13%	11%	11%	11%	11%	13%	12%
2022	17%	15%	12%	11%	11%	12%	14%	13%
2023	16%	14%	11%	10%	11%	11%	14%	12%
2024	15%	12%	10%	9%	9%	10%	13%	11%
Total	17%	14%	12%	11%	11%	12%	14%	13%

System-wide, an average of 1200 trainpersons are unavailable on weekends. This is a problem because, as noted above, railroading is a 24/7 industry – the trains cannot simply stop running on the weekends. Unavailability also fluctuates from month-to-month, and drops substantially on holidays and during other seasonal events, *e.g.* Super Bowl Sunday or the start of deer season.

These weekly and seasonal fluctuations mean that there is never a "correct" size for an extra board. Even if Union Pacific increased the size of the boards to account for periods when the maximum number of people are needed, it would just need to furlough some of those individuals as soon as the need passed. And in the meantime, the railroad would have to pay a guarantee to everyone on the extra board, regardless of whether they are working or not. Thus, "add more employees" is neither an adequate nor a cost-effective solution.

2. *Waiting Turn*

The current rules governing the filling of temporary vacancies are also inefficient. In many cases, a pool employee who lays off and misses a train will mark up (and so is available to work) before their replacement returns to the home terminal. However, existing agreements require the employee to wait until the slot or "turn" they would have worked returns to the home terminal before being allowed to work again.

For example, a pool freight employee may decide to take one day of vacation (a 24-hour period) at 00:01 hours on Monday. The employee's vacation would end at 00:01 on Tuesday. The extra board employee is called to fill the vacant turn at 06:00 on Monday. The entire round-trip takes 48 hours. The turn is placed at the bottom of the list and the employee that took the vacation day is placed back on their turn. When they reach the top of the list, they are called to work. Therefore, in this example, a pool employee taking a single day of vacation – a 24-hour period – ends up being unavailable for considerably more than 48 hours. The amount of time that a trainperson may spend waiting for their turn can vary, but on average, is 12.9 hours. That is wasted time that the employee could otherwise be available to work.

This arcane rule is a relic of an era when operating craft employees were assigned to a specific set of equipment – a particular steam engine and caboose – and worked together with a specific group of other employees. In those days, if an employee was absent, he had to wait until his crew and engine returned from a run before rejoining them. Nowadays, there is no justification for such a rule because operating employees are not married to a particular piece of equipment or a particular crew.

3. *Rules for Filling Longer-Term Vacancies*

When a trainperson job in road service becomes available, it is awarded by seniority. In general, trainpersons obtain jobs either by being the senior-most person to bid on a vacant job or by "displacing" a more junior employee. Displacements occur thousands of times per year. Displaced employees, in turn, must displace someone junior to them, and typically have up to 48 hours to do so.[9] Moreover, the 48-hour displacement clock generally does not start running until the carrier's crew management department verbally notifies the displaced employee by phone. In most cases, crew management must actually talk to the employee; leaving a voicemail or sending an email or text message is not considered sufficient notice unless the employee consents to receiving such notifications. As a result, the start of the 48-hour period can be and typically is delayed for hours or even days.

This process is not good for Union Pacific or its employees (especially those who are more junior). From the carrier's perspective, displacements artificially increase the size of its workforce (and therefore its costs), as a large number of existing employees are not available to work.[10] From the employee's perspective, displacements disrupt their schedules and reduce their earnings.

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[9] In some cases, employees have more than 48 hours after displacement to move to a new position. For example, if the displaced employee is not senior enough to hold a position within 30 miles of his current reporting point, he typically has at least 72 hours and sometimes more to exercise his displacement rights.

[10] There have been similar problems when new jobs were created, such as when additional turns are added to a pool. The carrier was required to bulletin new assignments for a certain period of time – usually 5 to 7 days – and wait for the period to close before placing the employee on the job. It was not unusual to have 100+ employees sitting idle on the "bump board" under the traditional bulletin process.

These problems are further exacerbated by "pass up" provisions in some agreements, which apply when an employee no longer wants to work their current assignment. Under pass up rules, an employee can elect to bump a junior employee on another assignment. Passing up assignments decreases workforce availability as the bump-and-bid daisy chain occurs down the seniority roster.

To address these issues, the parties have, over the last several years, agreed to implement a "standing bid" process, which currently applies to many (but not all) employees. With standing bid, employees keep their bids – or a list of their preferable jobs – on file. When a job becomes available, the senior employee with a bid to that assignment is placed immediately. This benefits both sides – the employee gets to their preferred assignment faster (and therefore has increased earning opportunities) and the carrier does not have to wait days to fill that assignment.[11]

G. Regulating the Size of Pools

Union Pacific staffs its freight pools with enough employees to meet operational needs while ensuring that employees have sufficient earning opportunities. To do so, the railroad has a weekly process for adjusting the number of turns assigned to the pool, *i.e.*, the number of slots available in the pool for employees to fill. This adjustment process is known as "regulating the pool."

[11] Under both standing bid and traditional bidding rules, if no one bids to an open job, the agreements provide that the carrier can force-assign an employee – generally the most junior person, who is required to work that assignment until they are able to bid to another job.

Traditionally, railroads have regulated pools by mileage. Union Pacific calculates the total miles operated by the employees in the pool over a certain time period, divides that total by the number of employees in the pool, and compares the average mileage with the target mileage range for that pool. If the total miles operated during this "look-back" period is below the target range, then the railroad will remove turns from the pool, with the result that employees in the pool will be called more often. If the total miles operated during the look-back period is above the target, then the railroad will add turns to the pool, with the result that employees will be called less often.

This process may sound straightforward, but it is not. There are often disputes over whether certain miles—such as miles spent deadheading—should be included in the calculation. In addition, because mileage regulation is intended in part to ensure equitable wage distribution, regulating pools can sometimes involve trying to convert various elements of pay into mileage equivalents. This is no easy task and there is no agreed-upon or uniform approach. The way mileage is regulated for one pool may not align with the way mileage is regulated for another pool.

On top of these drawbacks, mileage regulation does not permit the carrier to staff pools appropriately because it is based on historic demand and does not accommodate future known changes in demand or future known scheduled vacancies. Moreover, mileage regulation does not account for the Rail Safety Improvement Act of 2008, which imposed additional limits on when locomotive engineers and conductors can work. As a result, even if a pool's overall mileage is within the target range, the pool may still be inadequately staffed, leaving Union Pacific scrambling to fill temporary vacancies.

When Union Pacific finds that it needs to add turns to a pool outside of the weekly adjustment process, it calls a "make-up" turn, which is then filled like a temporary vacancy. Over the course of the past four years, Union Pacific has had to add 30,000 to 40,000 make-up turns per year.

H. Previous Efforts to Negotiate More Efficient Scheduling and Assignment Rules

Over the last 30 years, Union Pacific has worked with both SMART-TD and BLET to try to develop and implement new scheduling and assignment rules that accommodate both (1) the carrier's need to serve its customers and (2) the employees' need for predictable time off. The parties have tried several "work-rest" models, such as six consecutive days of availability followed by two rest days (6/2), seven available days followed by three rest days (7/3), eleven available days followed by four rest days (11/4), and six available days followed by four rest days (6/4).

Those efforts were described in a July 1, 2001 letter to the Federal Railroad Administration from Union Pacific's Labor Relations Vice President.[12] As that letter notes, the parties recognized the complexities involved in such an endeavor and established some general guiding principles for their negotiations. First, the parties agreed that work/rest is best addressed through the collective bargaining process. Second, agreements should maintain manpower availability, productivity, and without additional cost to the carrier. Finally, the unions would not agree to any model that reduced employees' earnings or opportunities for work.

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12 Ex. 8 (July 25, 2001 Letter from Union Pacific to FRA).

At that time, the most prevalent model under consideration was the 7/3 schedule. The parties adopted a pilot program to test that model with extra board employees, and by mid-2000, 27% of the SMART-TD extra boards were operating under a 7/3 schedule or similar arrangement.[13] Unfortunately, it quickly became clear this model did not maintain – let alone improve – employee productivity. More specifically, the introduction of scheduled rest periods reduced overall productivity by an average of 25 percent, and any marginal improvements in manpower availability were substantially outweighed by that loss in productivity. The bottom line was that a 7/3 work/rest schedule was cost-prohibitive. For those reasons, Union Pacific cancelled or renegotiated the agreements, including by prorating the guarantee paid to extra board employees and adjusting the guarantee forfeiture rules to encourage improved availability.

During this same time period, Union Pacific experienced substantial resistance from both SMART-TD and BLET to trying work-rest models in pool freight service. Only seven pools reached tentative agreements. Out of those seven tentative agreements, only three were ratified and went into effect. Two of those three agreements were subsequently cancelled by SMART-TD because scheduled days off interfered with the desire of some employees in pool freight service to maximize their earnings.

In July 2008, the passage of the RSIA dramatically changed the landscape. Employees now had substantial constraints on how much they could work. *See supra* at 11 (outlining daily, weekly and monthly limits). Even though the unions had lobbied

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[13] *See id.* at 2 & Ex. A (69 of 251 trainmen extra boards covered by work/rest agreement as of July 2000).

intensively for the RSIA, many of the operating craft employees they represent did not like the mandatory limits, which of course cut into their work opportunities and earnings. The unions tried to argue that employees should be entitled to their contractual guarantees even if they were not available to work due to RSIA limits, but those claims were repeatedly rejected in arbitration.[14]

In 2011, the parties negotiated several of the "Smart Rest" agreements referenced above. *See supra* at 12. Since then, however, SMART-TD has cancelled a number of those agreements. It did so ***not*** because Smart Rest provides insufficient opportunities for or control over time off, but because when Smart Rest is mandatory, some employees are unable to work as much as they would prefer.

I. The 2020 National Bargaining Round

At the same time that Union Pacific was trying to negotiate new scheduling rules for road service, the industry – including Union Pacific – was attempting to make headway on this and several related issues in national bargaining. In multiple rounds of multi-carrier negotiations, the industry sought to reform and modernize its antiquated road service scheduling, staffing, and assignment rules. The most recent such effort was during the 2020 round of national handling, which ultimately gave rise to the 2022 National Agreement.

[14] *See, e.g.*, Ex. 9 (*Brotherhood of Locomotive Engineers and Trainmen v. Union Pacific R.R. Co.*, NRAB First Div. Award No. 31170 (Jan. 19, 2023); Ex. 10 (*Brotherhood of Locomotive Engineers and Trainmen v. Union Pacific R.R. Co.*, NRAB First Div. Award No. 31180 (Jan. 19, 2023); Ex. 11 (*Brotherhood of Locomotive Engineers and Trainmen v. Union Pacific R.R. Co.*, NRAB First Div. Award No. 31184 (Jan. 19, 2023)).

1. The Parties' Section 6 Notices

National bargaining began in 2019, when the National Carriers' Conference Committee ("NCCC") and SMART-TD exchanged "Section 6 notices" proposing changes in existing agreements. The carriers "s[ought] changes to [work] rules," including "modernizing assignment procedures," among other things.[15] SMART-TD, which bargained as part of the Coordinated Bargaining Coalition ("CBC"), proposed a host of rule changes including "establish[ing] additional rest opportunities."[16]

2. Proposals Exchanged During Bargaining

During negotiations, each side fleshed out their respective proposals. The carriers proposed an "Improved Approach to Job Assignments," consisting of three parts: (1) establishing an electronic job-bidding system; (2) regulating pools by starts rather than by mileage; and (3) establishing self-supporting pools (*i.e.*, pools in which vacancies are filled by the first available employee in the pool as opposed to someone on an extra board).[17] These proposals were intended in part to "[i]ncrease employee utilization" and "address[ ] staffing and service needs."[18] SMART-TD rejected that and continued to insist that employees should have the option to take more time off.[19]

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15 Ex. 12 (NCCC Section 6 Notice to SMART-TD (Nov. 1, 2019) at 5.)

16 Ex. 13 (SMART-TD Section 6 Notice to NCCC (Nov. 20, 2019)) at Item 7(a).

17 Ex. 14 (Oct. 1, 2020 Bargaining Proposal from NCCC to CBC) at 2-9; Ex. 15 (Dec. 7, 2021 Bargaining Proposal from NCCC to CBC).

18 Ex. 14 (Relevant Excerpts of Oct. 1, 2020 Bargaining Proposal from NCCC to CBC) at 2, 4.

19 Ex. 16 (Mar. 24, 2021 Bargaining Proposal from CBC to NCCC) at 10-13; Ex. 17 (Jan. 19, 2022 Operating Craft Addendum to CBC Proposal), ¶ 3 ("All operating employees . . . will be given access to scheduled days off/rest days.").

3. The Parties' Positions Before PEB 250

After several months of bargaining, a Presidential Emergency Board was appointed to make recommendations for resolving the parties' dispute. The carriers proposed general wage increases totaling 16% over the 5-year term of the Agreement; cost-saving changes to health and welfare benefits; and a modified version of their scheduling and staffing proposals.[20] More specifically, the carriers separated their Automated Bid Scheduling proposal (Attachment B) from the pool regulation/self-supporting pool proposal (Attachment C), and, for the latter, proposed that any agreement would "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"

The carriers also proposed local negotiations over any "carrier-specific implementation matters." If the parties could not reach agreement, either party could invoke arbitration, but the arbitrator's jurisdiction would be limited to "issu[ing] an award that provides efficiency and savings for the carriers while at the same time achieving one or more of the items" offered by the carriers in exchange for the pool regulation/self-supporting proposal.[21]

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[20] Ex. 18 (July 11, 2022 Comprehensive Proposal from NCCC to Rail Labor Unions).

[21] Ex. 18 at Attachment B Section F & Attachment C Section D.

The unions proposed wage increases totaling 28% over the five-year term of the Agreement; status quo on health and welfare benefits; 15 days of paid sick leave; and additional paid holidays. In addition, for operating craft employees, the unions proposed "voluntary scheduled days off for all unassigned road service."[22]

4. PEB 250's Report and Recommendations

PEB 250 issued its report on August 16, 2021. It recommended wage increases totaling 22% – much more than the carriers had offered – and none of the carriers' proposed healthcare cost-saving measures (although it did recommend removal of a cap on the employees' share of their monthly health care contribution). The Board said that its generous wage recommendation was justified in part by the "other significant items in the package, both monetary and non-monetary." [23] Yet the only item of value for the carriers that the Board recommended was to "remand for further negotiation" the carriers' staffing and job assignment proposals, subject to simultaneous negotiations over the unions' scheduling proposal.[24]

Absent agreement, the Board recommended that the matter "proceed to binding arbitration." *Id.* The Board expressed its "hope[ ] that this [approach]" – under which the carriers would receive changes in scheduling, staffing, and related job assignment procedures in exchange for scheduled days off for employees – "may prove to be a 'win-

22 Ex. 19 (Rail Unions' Joint Proposal Before PEB 250).

23 Ex. 4 (PEB 250 Report) at 34.

24 *Id.* at 35; *see also id.* at 90 ("the subject of scheduled days off" is "intertwined with and integrally related to [the Carriers' staffing and job assignment proposals]" and "must also be addressed in the bargaining" over those proposals).

win' in which the Carriers obtain a more efficient and reliable system for manning the locomotives, with both operational benefits and cost savings, and employees will obtain preferred schedules with more control over their personal lives when not otherwise scheduled."[25]

5. Post-PEB 250 Negotiations Over the National Agreement

Following the PEB's report, the parties attempted to negotiate a new national agreement based on the Board's recommendations. The work rule recommendations were the subject of substantial discussion and disagreement. The unions initially argued that employees should be entitled to scheduled days off even if the carriers were unable to obtain staffing or job assignment changes through negotiation or arbitration.[26] Eventually, however, the unions abandoned that position, and the parties agreed that both issues – the unions' proposals for rest days and the carriers' proposed changes – would be handled under the same standard.[27] That is why, under all three Articles, if the parties are unable to reach agreement, an arbitrator has "jurisdiction to determine whether and how the rules referenced in this Article will be implemented."[28]

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[25] *Id*. at 35-36.

[26] *Compare* Ex. 20 (Sept. 1, 2022 SMART-TD Draft Proposal) at Art. VII (Scheduled Days Off) ("The Arbitration Board's jurisdiction shall be limited to the terms and conditions establishing voluntary assigned days off, but will not include any questions as to whether or not there will be an agreement establishing voluntary assigned days off in through freight service.") *with* Ex. 21 (Sept. 12, 2022 NCCC Draft Proposal) at Art. V (Scheduled Days Off) ("The Arbitration Board shall have jurisdiction to determine whether and how the rules referenced in this Article will be implemented.").

[27] Ex. 22 (Sept. 14, 2022 BLET Draft Proposal) at Art. V (Scheduled Days Off) (accepting proposal that "[t]he Arbitration Board shall have jurisdiction to determine whether and how the rules referenced in this Article will be implemented"); Ex. 1 (2022 National Agreement) at Art. V (Scheduled Days Off) (containing same language).

[28] *See* Ex. 1 (2022 National Agreement) at Arts. V, VI, & VII.

The parties also negotiated a side letter (No. 5) to Articles V, VI, and VII. [29] That side letter specifies where the parties may serve notices under each Article. For some carriers, the side letter carves out certain former railroad properties where notices are not permitted. On other carriers, including Union Pacific, there are no such limits.[30] Side Letter No. 5 also provides that, to the extent both sides invoked their right to seek their preferred work rule changes, "the negotiations on those notices shall at the request of either party be combined up to and including a single carrier-level interest arbitration process that includes all pending proposals under Articles V, VI, and VII. . . ."[31]

Finally, the Agreement also includes a series of Questions & Answers ("Q&As") for each Article, including Articles V, VI, and VII.[32] The Q&As provide additional details regarding the parties' intent behind those Articles, including with respect to the scope of the notices that may be served, the topics that may be addressed in negotiations, and the like. For the most part, however, the Q&As simply provide that questions shall be "subject to on-property bargaining in accordance with" the relevant Article, "except as limited by Side Letter #5."[33]

The NCCC and SMART-TD reached a tentative agreement, but it narrowly failed ratification. The terms of that tentative agreement were subsequently imposed on the parties through legislation enacted by Congress.

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[29] Ex. 1 at 20-21 (Side Letter No. 5).

[30] *Id.*

[31] *Id.*

[32] Ex. 1 at 26 (Agreed-Upon Questions and Answers).

[33] *Id.*

J. Local Bargaining Over Articles V, VI, and VII

SMART-TD served its notice under Article V on December 28, 2023.[34] That proposal included eight different work/rest models. SMART-TD proposed that if the parties were unable to agree to the terms of one of those eight models, the default model would be 6 work/available days followed by 3 rest days. In all of the work/rest models it proposed, rest days were voluntary, meaning each individual employee could decide if they wanted to take their days off or not. SMART-TD's initial proposal also included several other costly items completely unrelated to Articles V, VI, or VII, including weekend differentials, overtime, and various additional forms of paid leave.

Union Pacific served its notices under Articles V, VI and VII on January 15, 2024.[35] The carrier's initial proposal included the following:

- Work/rest schedules will be implemented by mutual agreement.
- Pool service will be combined with the protecting extra board with mandatory rest days.
- Enhanced bid system will be implemented with 24-hour displacement time.
- Pool service will protect their own vacancies (self-supporting).
- Pool service will be regulated on starts.

Formal discussions began in Las Vegas, Nevada on January 17, 2024. During the meeting, Union Pacific explained that making multiple rest days optional would complicate manpower planning, causing furloughs. It also objected to the Union's inclusion of items outside the scope of Articles V, VI, and VII.

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34 Ex. 23 (SMART-TD Art. V Notice to Union Pacific (Dec. 28, 2023)).

35 Ex. 24 (Union Pacific Arts. VI and VII Notice and Response to Art. V Notice (Jan. 15, 2024)).

On January 18, 2024, SMART-TD submitted a new proposal on Articles VI and VII.[36] For self-supporting pools, the union sought a perpetual 65-mile payment to all pool service employees, which would cost almost $1 million per year. The union also proposed preserving the existing 48-hour displacement and eliminating the carrier's ability to establish, abolish, or combine extra boards. In addition, SMART-TD proposed new certification allowances, cost of living adjustments, and increases in training pay.

Union Pacific countered on February 2, 2024.[37] With respect to Article V, the carrier proposed various work/rest models similar to the terms of its agreement with BLET. On Article VI, Union Pacific proposed a modified version of the parties' existing "standing bid" system. *See supra* at 18. On Article VII, Union Pacific maintained its existing proposal. In response, SMART-TD rejected the BLET models but indicated that the parties were not far apart on Article VI.

The parties met again in early March. SMART-TD shared some results of their membership survey, and the carrier shared modeling on voluntary days, confirming how voluntary rest would cause variability in the size of the workforce. After further discussions, the parties agreed to adopt a "working group" approach to review the modeling. That group – which consisted of three carrier members and four SMART-TD members – met in Topeka, Kansas on April 8 and 9, making some progress toward a mutually acceptable solution.

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[36] Ex. 25 (Jan. 18, 2024 Proposal from SMART-TD to Union Pacific).

[37] Ex. 26 (Feb. 2, 2024 Proposal from Union Pacific to SMART-TD).

Prior to the parties' next session on May 7 and 8, the union sent the carrier another counterproposal that did not advance the negotiations.[38] Among other problems, the union's proposal still included numerous items unrelated to Articles V, VI and VII such as bereavement leave, held-away-from-home terminal pay, training pay, step rate increases for new hires, and increases to certification allowance.

The last negotiation session was June 3 – 6. Prior to that meeting, the carrier made another counterproposal, to which the union reacted negatively.[39] On the second evening of negotiations, Union Pacific offered a series of compromises, including some elements of value that it was not obligated to provide under Articles V, VI, and VII, but only if the union would agree to items that were important to Union Pacific, including forfeiture of compensation guarantees when employees are unavailable to work. SMART-TD announced that the carrier's proposed forfeiture rule was a "deal-breaker," and left the negotiation. The union did not show for the last day.

While the parties had scheduled another session on June 17-20, Union Pacific's understanding, based on the union's statements at the early June meeting, was that the negotiations were over and the union would invoke arbitration. That impression was confirmed when, on June 14, the union submitted a final counterproposal that, in effect, substantially widened the gap between the parties.[40]

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[38] Ex. 27 (May 3, 2024 Proposal from SMART-TD to Union Pacific)

[39] Ex. 28 (June 3, 2024 Proposal from Union Pacific to SMART-TD)

[40] Ex. 29 (June 14, 2024 Proposal from SMART-TD to Union Pacific).

CARRIER'S PROPOSAL

The carrier's proposed terms of implementation of Articles V, VI, and VII are summarized as follows:

Article	Proposed Rule	Details	Headcount Change	Cost or Savings
V	5&1 work-rest schedule for thru-freight pools	• Rest day is optional. • Employees must notify the carrier 48 hours in advance of the adjustment day (Wednesday) if they will not take rest day. • For guaranteed road pools, guarantee will be adjusted for observed rest days; guarantee will be forfeited for any layoff.	482	$16.55
V	"Smart Rest" for road extra board employees	• Option to take 24 hours rest after working five consecutive starts. • Extra board guarantee will not be reduced if an extra board employee opts to take the 24-hour rest period. • If an extra board employee is unavailable in a non-compensated or paid sick status more than one occurrence or if the unavailability time exceeds 48 hours, guarantee will be forfeited for that pay period. • If no crew is available due to observance of rest days or lay-offs, a qualified employee may be used to perform service.	(11)	$1.51

Article	Proposed Rule	Details	Headcount Change	Cost or Savings
VI	Standing bid	• Employees must maintain a bid listing preferred assignments. • All vacancies and newly created assignments will be filled by the senior trainperson with a bid for an assignment. • Standardized rules for bulletining new assignments or when assignments must be re-bulletined. • Replaces all existing bid procedures, including "daily preference." • Forcing rules apply if an employee does not maintain a bid or if a position goes no-bid.	(11)	($0.38)
VI	Displacement time	• Reduced from 48 hours to 24 hours.	(32)	($1.10)
VII(a)	Self-supporting pools	• Self-supporting pools operate first in, first out at the home and away-from-home terminals. • When a trainperson assigned to a pool is unavailable, their turn (place on the board) will be removed. When the trainperson becomes available, their turn will be placed at the bottom of the board (to eliminate "waiting turn"). • Turns may be temporarily added to the board if the board is exhausted, and protected by an available trainperson. • Drop turn, step-up, make-whole, and additional penalty payments are eliminated. • Vacancies covered by the pool include any hours of service relief for the pool. • Existing rules permitting the carrier to call non-pool crews to perform work remain in effect.	(78)	($3.32)

<table>
<tr><th>Article</th><th>Proposed Rule</th><th>Details</th><th>Headcount Change</th><th>Cost or Savings</th></tr>
<tr><td>VII(b)</td><td>Pool regulation by starts</td><td>
The carrier will regulate non-guaranteed pools based on the following start count:
<table>
<tr><th>Pool Mileage</th><th>Pool Factor</th></tr>
<tr><td>Up to 150</td><td>Between 18.3 and 19.9</td></tr>
<tr><td>151-180</td><td>Between 16.6 and 18.3</td></tr>
<tr><td>181-230</td><td>Between 15.8 and 17.4</td></tr>
<tr><td>231-260</td><td>Between 14.1 and 15.8</td></tr>
<tr><td>261-290</td><td>Between 12.5 and 14.1</td></tr>
<tr><td>291 or greater</td><td>Between 11.6 and 13.3</td></tr>
</table>
Pool adjustments will be made on Wednesdays with 20-day check period multiplied by 1.5 and a “look ahead” factor that accounts for known vacancies that are scheduled in the upcoming seven (7) days (Wednesday through Tuesday).
Standard language permitting parties to adjust the check period to accommodate an abnormal influx (or absence) of traffic.
</td><td>n/a</td><td>($1.34)</td></tr>
<tr><td>VII(b)</td><td>Carrier may establish, abolish or combine any road, yard, combination or supplemental extra boards</td><td>
Based on the needs of service along with the appropriate vacancy procedures to protect service.
Carrier has full discretion on the regulation of guaranteed pools and extra boards.
</td><td>(101)</td><td>($9.43)</td></tr>
<tr><td>VII(c)</td><td>Workforce predictability and flexibility</td><td>
All pool freight and extra boards’ prearranged layoff system thresholds for compensated time off will be increased to no less than 5 percent of the respective board each day.
</td><td>n/a</td><td>n/a</td></tr>
</table>

Article	Proposed Rule	Details	Headcount Change	Cost or Savings
VII(c), cont.	Workforce predictability and flexibility	• Employees may schedule prearranged days 180 days in advance, but no later than the Sunday before the regulation date to observe a pre-arranged day the following week. • All prearranged days will begin at 0001. Trainpersons assigned to pool or extra board will be allowed to advance or defer their prearranged day up to 16 hours. Assigned trainpersons may not advance or defer prearranged days off. • Available trainpersons in a non-guaranteed pool may elect to trade positions/turns with another available trainperson on the same board up to 12 times per year. Trades must be mutually agreed by both trainpersons and once completed, both trainpersons must perform compensated service prior to making another trade.	n/a	n/a
Total			**249**	**$2.49M**

As noted above, full contract language, reflecting the exact terms that Union Pacific is proposing for this Board's award, is attached hereto as Exhibit 7.

CARRIER WITNESSES

At the hearing, Union Pacific intends to present testimony from some or all of the following individuals as part of its direct case:

1. Doug Svatos

Mr. Svatos is employed by Union Pacific as General Director, Crew Management Services. He will testify regarding Union Pacific's operations, crew management and scheduling practices, use of pools and extra boards, and related subjects. He will explain current operations, how operations would be conducted under Union Pacific's proposed rules, and the practical problems with SMART-TD's proposed rules.

2. Grant Janke

Mr. Janke is currently the Assistant Vice President of Capital Planning and Finance for Union Pacific. He will testify regarding the costing of Union Pacific's proposal and the proposals made by SMART-TD.

3. Jennifer Powell

Ms. Powell is employed as a General Director, Labor Relations for Union Pacific. She will testify regarding the bargaining between Union Pacific and SMART-TD and explain the specific terms of Union Pacific's proposal.

4. Brendan Branon

Mr. Branon is the former chairman of the National Carriers' Conference Committee and was the chief spokesperson and strategist for the railroads in the multi-carrier negotiations that led to the 2022 National Agreement. He will testify about the intent of that Agreement.

ARGUMENT

The Board should adopt Union Pacific's proposal as the parties' agreement to implement Articles V, VI, and VII. The railroad's proposal meets all of the traditional criteria for an award – it is narrowly-tailored to the subjects in dispute, balanced and fair, and provides a practical means of addressing the key interests of both SMART-TD and Union Pacific.

In the Sections below, we explain each of these points in more detail. First, in Section I, we address the proper scope of this arbitration, showing that the 2022 National Agreement limits this Board's jurisdiction to just the implementation of the specific rules outlined in Articles V, VI, and VII, and so does not allow for changes in other compensation or paid leave rules. Union Pacific's proposal fits within those limits; the union's does not. Next, in Section II, we address the costs and benefits of the parties' respective proposals. We demonstrate that Union Pacific's proposal reflects an even trade of value, balancing the cost of rest days for thru-freight employees against the efficiencies that can be derived from self-supporting pools and pool regulation. By contrast, the union's proposals would impose hundreds of millions of dollars in extra cost every year. In Section III, we show that Union Pacific's proposal is workable – and can be easily implemented – for pool service, extra boards, and the "standing bid" process. Finally, in Section IV, we briefly respond to several of the arguments raised by SMART-TD in bargaining, explaining that other carrier agreements are not good models, none of Union Pacific's proposals are barred by existing agreements, and that the parties have already engaged in sufficient bargaining.

I. THE BOARD SHOULD IMPOSE NARROWLY-CRAFTED TERMS.

In an interest arbitration, the arbitrator's role is to set the terms of the parties' collective bargaining agreement. Elkouri & Elkouri, How Arbitration Works (6th ed. 2003) ("Elkouri") at 1358. This does not mean, however, that an arbitrator's discretion is unbounded. Rather, the board's discretion is limited by the scope of what the parties have agreed to submit to arbitration. *See, e.g.*, *NCCC v. BMWED & SMART-MD*, Arb. Bd. No. 602 (2018) (Vernon, Arb.); *Chicago & North Western Transp. Co. v. United Transp. Union*, Arb. Bd. No. 490, at 6, 16 (1988) (Zumas, Arb.). Hence, the first step in the Board's analysis should be to look to the parties' existing agreements – both the National Agreement and the arbitration agreement – to determine what they say about the scope of the Board's jurisdiction and the range of subjects at issue.

A. The Issue Before the Board is Restricted to Implementation of the Specified Rules in Articles V, VI and VII.

In many interest arbitrations, the agreement to arbitrate provides that the arbitrator shall write a broad agreement on wages, rules, and working conditions. That is not true here. The jurisdiction of this Board is cabined to just a handful of narrow questions set forth in the National Agreement. In particular, Articles V, VI and VII each identify a specific rule or set of rules and provide that if the parties are unable to reach agreement, the "Arbitration Board shall have jurisdiction to determine whether and how ***the rules referenced in this Article*** will be implemented."[41]

[41] Ex. 1 (2022 National Agreement) at 8, 10, 12 (emphasis added).

That language is clear that the Board's jurisdiction is limited to addressing only the rules "referenced in this Article." Thus, except as otherwise mutually agreed, the ***only*** subjects that the Board may address are rules for scheduled days off, a new procedure for bidding, and rules providing for self-supporting pools, pool regulation, and "workforce predictability and flexibility." The language of the 2022 National Agreement provides no basis to impose changes in matters that are not mentioned in Articles V, VI, and VII, such as extra compensation or paid leave.

The bargaining history – and in particular the proceedings before PEB 250 – confirm that conclusion. During those proceedings, the unions sought various changes that the Board declined to recommend. In particular, SMART-TD asked for increases in meal allowances, differentials, more paid time off, and other increases in compensation.[42] The Board rejected those requests.[43] Having done so, it makes no sense to suggest that the Board nevertheless allowed the union to obtain those changes through the process provided under Articles V, VI, and VII, all of which address different and limited subjects. Indeed, nothing in the Board's recommendations even hints that the union was entitled to its otherwise rejected demands through a back door hidden in Articles V, VI, and VII. Given the size, scope, and centrality of the union's demands for more compensation, if the Board had intended to provide a pathway to that result, it certainly would have said so directly.

[42] *See* Ex. 19 (Rail Unions' Joint Proposal Before PEB 250); Ex. 30 (SMART-TD Submission to PEB No. 250).

[43] Ex. 4 (PEB 250 Report) at 81-86, 94-96.

Arbitral precedent also supports Union Pacific's position on this point. To date, there have been only two other arbitrations under Articles V, VI, and VII, both of which involved Canadian Pacific Kansas City Railway Company ("CPKC") and the BLET.[44] In those cases, the union sought benefits that are not mentioned in Articles V, VI and VII.[45] The carrier opposed the proposed changes, arguing that they were inconsistent with the National Agreement and exceeded the Board's jurisdiction.[46]

The Board agreed with the carrier, finding that the organization's requests for benefits – aside from the rest days expressly provided by Article V – were improper. It reasoned as follows:

> A careful reading of Article VI and VII reveal the PEB's clear intent to allow the Carrier to select from a short list of pre-determined issues and in doing so, control a very limited dialogue. The Organization's response is limited to issues concerning the Carrier specified matters notice, ***precluding the negotiation of additional issues without clear consent*** and waiver by both parties.[47]

The Board therefore rejected the union's attempt to address "measures beyond the scope of the Article VII items proper for negotiation and subsequent arbitration."[48]

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44 Articles V, VI, and VII of the National Agreement between BLET and the NCCC are identical to Articles V, VI, and VII of the National Agreement between SMART-TD and the NCCC. Accordingly, the rationale of the two CPKC awards applies here.

45 *See, e.g.*, Ex. 3 (CPKC Award) (Oct. 14, 2024), at 12 (proposing to allow engineers to "drop their turn" (*i.e.*, to self-elect to go to the bottom of the board) and to continue receiving the same amount of guaranteed income regardless of whether they chose to observe rest days); Ex. 31 (CPKC Award) (Nov. 15, 2024) at 5 (asking the Board to convert the sole remaining non-guaranteed extra board to a guaranteed extra board), and 7 (proposing to change existing rules for "held away from home" pay and to add bonus pay for certain pool employees).

46 *See* Ex. 3 (CPKC Award) (Oct. 14, 2024) at 6; Ex. 31 (CPKC Award) (Nov. 15, 2024) at 6-7.

47 Ex. 3 at 11 (emphasis added).

48 *Id*. at 12.

B. Union Pacific's Proposal is Limited to Issues of Implementation.

In this proceeding, Union Pacific has restricted the terms it has proposed to the specific topics expressly addressed in Articles V, VI, and VII, except to the extent otherwise mutually agreed by the parties. The union, by contrast, has sought any number of changes that go well beyond those Articles.

1. Under Article V, Union Pacific's proposal expressly provides for "rules creating voluntary assigned days off in thru-freight service," both for employees assigned to pools and those assigned to extra boards.[49] Those rules include, more specifically, (1) the proposed schedule of 5/1 for pools; (2) "Smart Rest" for extra boards; (3) the period of notice that must be provided if an employee does not want to take a rest day; (4) how rest days will be treated for purposes of existing guarantee rules; and (5) a provision to account for unavailability of crews due to rest.

All of those are matters of "implementation" that fall squarely within the province of this Board. For example, employees are, by definition, not available to work on a rest day. Thus, any implementation of assigned rest day rules needs to account for how that unavailability will be handled under existing rules providing for a guaranteed minimum in exchange for full availability. Likewise, the introduction of assigned rest days will not alter the needs of carrier service – the trains will still need to run. Thus, implementation of rest days will have to address questions regarding how the parties will handle situations where no employees are available.

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[49] Ex. 1 (2022 National Agreement) at 8.

2. Article VI is intended to fix the inefficiencies in existing assignment rules by streamlining the process through which employees submit their preferences for jobs. Union Pacific's "standing bid" proposal accomplishes that by providing for, as Article VI allows, a "system containing all employees' assignments, including pools and extra boards, which will be updated as necessary."[50] It also takes into account "seniority, qualifications and job preferences."[51] Union Pacific's proposal further provides for a method for employees to "update their assignment preferences" and for new assignments to be "bulletined or posted."[52] It also satisfies all of the requirements of Article VI(c) and (d).

To be sure, the standing bid system proposed by Union Pacific is not the sort of "automated" bid system in use at other carriers. But this is an area where, during bargaining, both sides were willing to depart from some of the technical terms of Article VI. As noted above, standing bid is already in place on large portions of Union Pacific, is proven to be effective, and is preferred by both sides over an entirely new electronic system that could take years to design and implement. Given that standing bid can accomplish all of the particulars specified in Article VI(a) – (d), it is well within the jurisdiction of the Board to include Union Pacific's proposed terms as part of the implementation of that Article.

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50 *Compare* Ex. 1 (2022 National Agreement) at 9 *with* Ex. 7 (Union Pacific Proposed Terms).

51 *Id.*

52 *Compare* Ex. 1 (National Agreement) at 9 *with* Ex. 7 (Union Pacific Proposed Terms).

Because the parties appear to be in accord on the general contours of a standing bid agreement, the only real questions to address are (a) the amount of displacement time and notice provided under the new system and (b) whether the new approach will replace existing antiquated alternative systems such as "daily preference" boards. With respect to displacement, a fully automated assignment system would effectively eliminate displacement time altogether, requiring employees to report to a new position with no break at all. However, the automatic reshuffling this entails would likely result in furloughs for junior employees before the system can "catch up." Providing for an extra 24 hours (and automatic notice) will reduce the chances of that, while still addressing the inefficiencies caused by extended periods of displacement and notification times.[53] *See supra* at 17 - 18 (describing the issues caused by current rules). This is exactly the sort of detailed question of implementation that this Board is empowered to address.

Likewise, implementation of consistent, system-wide standing bid rules will replace related assignment rules that cause substantial inefficiencies. That would include, for example, the so-called "daily preference" boards that allow employees to jump from one job to another on a daily basis, causing a decrease in the overall availability of the employees assigned to those boards. The idea that standing bid will supersede any inconsistent assignment rules may seem obvious, but is expressly addressed in Union Pacific's proposal to avoid any debate on this point.

[53] Again, this is in accord with the underlying intent of Article VI. The carriers' proposal before PEB 250 was expressly intended to improve employee utilization by decreasing the amount of time employees spent in limbo after being displaced from their current position. *See* Ex. 32 (Carriers' Work Rules Submission to PEB 250) at 23-28.

3. Union Pacific's proposal on Article VII also closely tracks the specific terms provided in the National Agreement. First, the proposal creates self-supporting pools, as provided by Article VII(a), and includes all of the specific details provided in VII(b). Essentially all of the elements of Union Pacific's proposal follow on directly from the express terms of Article VII. Perhaps the only specific question of implementation is the extent to which each pool will cover its own Hours of Service relief, which is a question of protecting vacancies under Article VII(a)(1) and/or regulating the pool under Article VII(b).

Second, Union Pacific has proposed detailed terms for pool and extra board regulation under Article VII(b), including detailed start-based regulation, a process for making adjustments based on known availability, and the right to abolish or establish boards, all of which are, again, expressly provided in Article VII. Issues under debate here concern details such as how the "look-ahead" will function under Article VII(b)(2) and (3), which includes how many "pre-arranged lay-off" slots and other known vacancies (such as vacation weeks) will be considered in regulated the pools. Here again, there should be no debate that these are all matters of implementation.

Third, Union Pacific's proposal includes all of the elements of "workforce predictability and flexibility" required under Article VII(c). In particular, it provides for (a) rest outside of RSIA in the form of Smart Rest, (b) a procedure for trading turns, and (c) pre-arranged layoffs. Essentially all of those provisions benefit the employees in thru-freight service. Accordingly, none of the details are, as Union Pacific understands it, the subject of any real debate.

4. Union Pacific's proposal does not include any other elements that are not questions of implementation. By contrast, SMART-TD has proposed any number of additives that are not referenced – directly or indirectly – in Articles V, VI, and VII. It has pursued demands for, among other things:

- "Earned days off," which is a form of supplemental leave
- An extra week of leave after 12 years
- Expansion of bereavement leave
- Increases to the payment for meals away from home
- Differentials for weekend, night, and holiday service
- Overtime after 8 hours
- Expansion of guarantee payments for employees who are required by law to be unavailable
- More personal leave
- Additional pay when held away from home
- Elimination of step (entry) rates
- Increased pay for remote control operations
- Increased certification pay
- Expanded leave for new hires

None of these demands are encompassed within Articles V, VI, and VII, and thus none are properly before this Board. The Board should disregard any demands for compensation or other benefits that do not concern implementation of the rules proposed by Union Pacific.

II. THE BOARD SHOULD IMPOSE EQUITABLE TERMS.

"Interest arbitration is more nearly legislative than judicial . . . [and] our task . . . is to search for what would be, in light of all the relevant factors and circumstances, ***a fair and equitable answer*** to a problem which the parties have not been able to resolve by themselves.'" Elkouri at 1358 (quoting *New York Shipping Ass'n*, 36 Lab. Arb. (BNA) 44, 45 (1960) (Stein, Arb.)) (emphasis added). In doing so, the board should be guided by what the parties "'should themselves have agreed to at the bargaining table.'" Elkouri at 1359. (quoting *Twin City Rapid Transit Co*., 7 Lab. Arb. (BNA) 845, 848 (1947) (McCoy, Freeman, & Goldie, Arbs.)).[54]

When considering what the parties would agree to in bargaining, the natural presumption is, of course, that the parties would agree to something that is balanced and fair, *i.e*., something that provides value to both sides. It should be obvious that no one would voluntarily agree to anything that is inherently inequitable. That is why interest arbitration panels and presidential emergency boards routinely reject proposals that are not supported by some (at least roughly equivalent) *quid pro quo*. One example from the railroad context is Presidential Emergency Board No. 243, which declined to recommend various work rule changes sought by a group of rail unions, noting that the unions were offering little or nothing in exchange for their demands:

[54] The corollary to that principle is that a party should not be allowed to obtain through interest arbitration what it would be unable to achieve through the usual collective bargaining process. *See, e.g.*, *Village of Greendale*, Decision No. 30432-A, (2003) (Krinsky, Arb.); *see also City of Highland Park*, 134 Lab. Arb. (BNA) 581, 588 (2014) (Goldstein, Arb.) (it is a "basic tenet of interest arbitration that [the arbitrator] should avoid any decision which would usurp the normal processes of collective bargaining.").

> [T]he money must come from somewhere. There was no discussion or proposal to fund these requests, in whole or in part, from the GWIs being recommended by this Board. Nor was there any discussion about other *quid pro quos* that could be discussed and which would ameliorate the tremendous monetary cost of many of the proposals, even if one assumes arguendo that the proposals were shown otherwise to have merit (in whole or in part).

Report of Emergency Board No. 243 at 83. *See also, e.g*., Report of Emergency Board No. 182 at 13 (noting that wage increases "reflect savings to the carrier from the elimination of costly work rules and practices" and declining to recommend similar increases for unions that "have been unwilling to consider areas for such 'quid pro quo' improvements and cost savings").

Arbitral precedent from outside the railroad industry supports the same idea – a proposed change in compensation or work rules needs to be justified by some equivalent value for the other side. As one arbitration award puts it, "it is a common practice in bargaining that the parties to interest arbitration disputes are impliedly bound to make mutual concessions sometimes referred to as 'quid pro quo' (Latin for 'what for what,' or 'something for something'). Because the union has not offered any such concessions to balance its demand to change the method of paying for health insurance, it does not meet the 'quid pro quo' test." *Washington Cty. Deputy Sheriff's Ass'n*., 1999 Lab. Arb. Supp. (BNA) 109523 (1999) (Flaten, Arb.). *See also*, *e.g.*, *Elk Electric, Inc*., 2012 WL 10236540 (2012) (Williams, Arb.) (rejecting proposals that lack adequate *quid pro quo*); *Globe Newspaper Co., Inc*., 2008 WL 6045841 (2008) (Bornstein, Arb.) (same); *N. Cent. Cmty. Serv. Program Bd.*, Decision No. 30265-A (2002) (Michelstetter, II, Arb.) (each proposal must be supported by some *quid pro quo*).

A. The Parties to the National Agreement Intended to Provide For an Equal Exchange of Value.

In this case, Articles V, VI, and VII call for the sort of balanced *quid pro quos* that one would expect in a complex agreement negotiated by sophisticated parties. As noted above, the whole idea, broadly speaking, was to trade more certainty in work/rest schedules for new efficiencies in scheduling and assignments. The carriers' submission to PEB 250 was explicit on this point, noting that

> The Carriers have not just said "no" to all of the Unions' proposals [regarding scheduling predictability and rest]. Rather, they have proposed alternative, effective, fair, and incremental changes that will address many of the Unions' concerns about operating craft scheduling while still preserving (and improving) operational efficiency. 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.[55]

In particular, the carriers explained, adoption of self-supporting pools would allow the parties "to negotiate 'work/rest schedules' that give employees in the pool greater certainty about which days off they will have," as well as pre-arranged layoffs and trip-trading.[56]

The PEB understood that this was the intended trade, describing the carriers' offer of rest days as "a partial quid pro quo for agreement to [their] proposal concerning bidding, pools, and extra boards for the operating crafts," and recommending that all of the related scheduling issues – including self-supporting pools and rest days – be handled together. Ex. 4 (PEB 250 Report) at 82, 90-91.

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55 Ex. 32 (Carriers' Work Rules Submission to PEB 250) at 22.

56 *Id.* at 33.

More broadly, the Board's overall package of wages, benefits, and work rules was designed to reflect a balance, taking into account all of the various forms of value provided to both sides. *Id.* at 34-35. Thus, for example, the Board's wage recommendations were based in part on "the other significant items in the package, both monetary and non-monetary." *Id.* In particular, the Board noted, its recommended wages accounted for the fact that it was providing for a process to resolve "the Carriers' requests regarding automated bidding and scheduling, self-supporting pools, pool regulations, and extra boards, and those of the BLET and SMART-TD relative to the issues of scheduling (including the scheduling of scheduled days off for unassigned road service)." *Id.* at 35. In other words, part of the *quid pro quo* for work rule relief was a higher wage package. Accordingly, this is not a situation where the Board expected the carriers to pay extra for the changes in Articles VI and VII – it expected the carriers to pay for those changes through the recommended wage increases, maintenance of health care benefits, and the inclusion of new rest days.

Indeed, the Board explicitly described its work rule recommendation – what became Articles VI and VII – as a mechanism to reduce (not increase) costs for the railroads:

> The Board hopes that this may prove to be a "win-win" ***in which the Carriers obtain a more efficient and reliable system for manning the locomotives, with both operational benefits <u>and cost savings</u>***, and employees will obtain preferred schedules with more control over their personal lives when not otherwise scheduled. This, too, is difficult to quantify in terms of GWI equivalence, but is a "plus" when viewed in the context of the overall package.

Id. at 35-36 (emphasis added).

In the parties' post-PEB negotiations, they essentially adopted the Board's framework, meaning that the underlying concept of Articles V, VI and VII was to provide equivalent value for both sides. They agreed, in particular, that the cost of rest days would be balanced by savings realized through implementation of self-supporting pools and pool regulation (along with any additional efficiencies resulting from improved bidding systems).[57]

The recent Moreland award – which, as noted above, addressed the same issue as this Board – also recognizes that implementation of Articles V, VI, and VII needs to reflect a fair exchange of value. It states in pertinent part:

> "The product of years of negotiation, PEB 250 Recommendations also reflect bilateral gains for the Carrier commensurately bargained for in good faith which serve to offset the financial wins the Organization beholds. The presence of ***those balanced rights*** are reflected in the directives and language of Articles V, VI, and VII . . . ."

Ex. 3 (CPKC Award) at 8 (emphasis added).

In fact, even SMART-TD itself has acknowledged that there must be an equivalent trade of value. In one of its letters, the union asserts that "[t]he financial gains Carrier may obtain in negotiations must be ***equally beneficial*** to the Organization as Carrier committed to a quid pro quo in PEB 250."[58] As shown below, the union is wrong about the value of the various components of Articles V, VI, and VII, but it is correct when it says that the exchange must be "equally beneficial."

57 Ex. 33 (Declaration of Brendan Branon ("Branon Decl.")) ¶¶ 8-9.

58 Ex. 5 (Jun. 14, 2024 Letter from SMART-TD to Union Pacific) at 2 (emphasis added).

B. Union Pacific's Proposal Reflects an Equal Exchange.

Because the exchange of value needs to be at least roughly equivalent, perhaps the most important question in this case is how to value each aspect or piece of the parties' proposals. Union Pacific has engaged in a detailed and thorough costing exercise that measures each of those elements. A copy of the full analysis is provided at Exhibit 6. In sum, the elements of Union Pacific's proposal that come with either material costs or material savings are as follows:

Article	Proposal	Headcount Change	Cost/(Savings) to Union Pacific in millions
V	5&1 work/rest for thru-freight pools	482	$16.55
V	Smart Rest for thru-freight extra board	(11)	$1.51
VI	Standing bid	(11)	($0.38)
VI	24 hour displacement	(32)	($1.10)
VII(a)	Self-supporting pools	(78)	($3.32)
VII(b)	Pool regulation by starts	n/a	($1.34)
VII(b)(6)	Establish, abolish or combine extra boards	(101)	($9.43)
VII(c)	Workforce predictability and flexibility	n/a	n/a
Total		**249**	**$2.49**

As this summary reflects, Union Pacific's proposal results in a roughly equal trade of value for value, slightly favoring the employees. This projection is based on a methodology that focuses primarily on the value of projected changes in headcount and guarantee payments, as detailed further below.

1. The Cost of Rest Days Under Article V

The main benefit to the employees – and cost to Union Pacific – is the option to take guaranteed rest days under Article V. Under the 5/1 schedule proposed by Union Pacific, employees will be unavailable an additional 16.6 percent of the time (one out of every six days), requiring a corresponding increase in the number of pool employees needed to perform the same amount of work. A 16.6 percent increase in the current number of pool employees will require 482 people.[59]

To be sure, rest days are unpaid, and so the union has, at times, suggested that allowing employees to take more rest has no real cost to the railroad. That is not so. While there is no additional wage cost under this model – because it assumes the same amount of work – Union Pacific pays a substantial amount in benefits to its employees – *i.e.,* health and welfare, retirement, etc. – regardless of how much they work. Those benefit costs work out to over $34,000 per person per year. Accordingly, adding 482 more employees imposes additional "carrying costs" on Union Pacific of at least $16.55 million per year.[60]

[59] If the percentage of unavailable time were higher, then the number of people required to fill in would be higher as well. For example, a 6/2 schedule would require a 25 percent increase in headcount. A 6/3 schedule would require a 33 percent increase.

[60] Ex. 6 (Union Pacific Costing Analysis).

Union Pacific's proposal also includes "Smart Rest" for thru-freight employees assigned to a guaranteed extra board. As explained above, Smart Rest allows employees who are at risk of triggering federal Hours of Service mandatory rest to choose to take a day off and thereby avoid hitting those limits. *See supra* at 12. The practical consequence is that an extra board employee can work five consecutive starts (as defined above) with one day of rest instead of working six days in a row, in which case they would be required by law to take two full days of rest. While Smart Rest generates additional availability – meaning fewer employees are needed, which is a cost savings to the railroad – extra board employees who take Smart Rest do not lose their guarantee when they do so (whereas they do lose their guarantee if unavailable under the Hours of Service rules). Those extra benefits, offset by the savings from additional availability, result in a net cost to Union Pacific of about $1.51 million per year. Added to the cost of a 5/1 schedule for pool service, the total cost of Article V to Union Pacific – assuming its proposal is adopted – is around $18.06 million per year.

2. Savings From Bidding, Assignment and Regulation Rules

As it turns out, it is difficult to achieve $18+ million in savings through the mechanisms provided under Articles VI and VII. The main opportunities for cost savings are (a) headcount reductions and (b) reducing guarantee payments to employees by reducing reliance on extra boards. But none of the available levers, by themselves, amount to anything close to $18 million. Thus, in order to achieve a balanced result, the Board will need to adopt essentially all of Union Pacific's specific implementation proposals for Articles VI and VII.

With respect to Article VI, adoption of Union Pacific's standing bid proposal will result in a decrease in "displacement time" from 48 hours to 24 hours. Because, as explained above, employees who are in the process of displacing are not available to work, reducing displacement time means that more of the existing workforce would be available, and thus Union Pacific will be able to forego hiring up to 32 additional employees.[61] Using the same carrying cost assumptions, it works out to a total of $1.10 million. Standing bid will also generate some additional savings – equating to about 11 employees or $0.38 million – by eliminating the need for "daily preference" boards, which are an antiquated and inefficient system that allows employees to avoid working for extended periods of time.

Under Article VII, the provisions allowing Union Pacific to eliminate unnecessary extra boards will generate the largest projected savings of any individual component of the new rules. By abolishing about 55 "supplemental" boards – all of which currently have very limited utilization – and redeploying those employees, Union Pacific will save about $9.43 million per year in guarantee payments.[62] Likewise, the adoption of self-supporting pools will shift work from extra boards to the pools, reducing guarantee payments by another $2.39 million.[63]

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[61] There are, on average, currently about 128 employees in displacement status at any given time. Based on past experience with the engineers craft, reducing the displacement period from 48 to 24 hours should cut that number by about 25 percent, or roughly 32 employees.

[62] This estimate assumes that roughly 101 out of the 130 current supplemental extra board headcount can be shifted to more productive work.

[63] Using pools rather than extra boards reduces headcount by about 78 despite performing the same amount of work because pool employees will work, on average, about 1 more start per month than employees on the extra board.

Article VII will also contribute further savings through implementation of Union Pacific's proposal on pool regulation. By allowing for a weekly projection of availability – based in part on pre-approval of 5 percent of each pool for lay-offs – Union Pacific can further reduce its reliance on the extra boards. Here again, the savings (amounting to about $1.34 million) is a function of reduced guarantee payments, not lower headcount.[64] More guarantee savings are possible by using each pool to provide its own Hours of Service relief – *i.e.* "dog-catching" trains that are left when a crew reaches its maximum daily hours limit. However, Union Pacific's proposal includes payment of a full trip rate to pool service employees who will perform such work, thereby reducing the net savings to just under a million per year ($0.93).[65]

* * * *

Altogether, full implementation of Articles VI and VII would save Union Pacific as much as $15.57 million per year. It should be emphasized, however, that those savings are only projections, and so the total savings to Union Pacific could be less, especially if employee availability does not increase to the extent expected (as has been the case on some other railroads that have implemented these provisions). Under any circumstances, the employees are likely to come out at least slightly ahead. The balance need not be exact, of course, but Union Pacific's proposal comes closest to an even and fair distribution of costs and benefits to both sides.

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[64] *See id.* (Costing Analysis).

[65] *Id.*

C. The Union's Proposal Is Not an Equal Exchange.

The various options proposed by SMART-TD would impose tens – if not hundreds – of millions of dollars of excess cost on the railroad. To illustrate this fact, Union Pacific has costed two versions of SMART-TD's demands, including (1) its original offer on December 28, 2023, and (2) its last offer, dated June 14, 2024.

1. The Union's December 28, 2023 Proposal

Article	Proposal	Headcount Change	Cost (in millions) to Union Pacific
V	6/3 rest for pool service	1686	$93.42
V	6/3 rest for extra board with no guarantee offset	n/a	$56.71
VI	Existing standing bid	n/a	$0
VII	Maintain existing extra board regulation practice	n/a	$0
N/A (Extras not included in Articles V, VI, and VII)	Earned day off (1 per quarter)	0	$1.16
	Extra week of leave	82	$14.41
	Bereavement leave	0	$0.20
	Away from home meals	0	$3.08
	Differentials	0	$39.85
	Overtime	0	$67.45
	Guarantee for HOS rest	0	$2.28
	Personal leave	105	$16.59
	Away from home pay	0	$30.24
	Elimination of step rates	0	$17.63
Total		**1873**	**$343.02**

As this summary shows, the union's original offer was wildly disproportionate. Rather than a "win-win" that includes "cost savings" for the carrier, SMART-TD's original proposal would impose more than 1/3 of a ***billion*** dollars in additional cost ***per year***. Leaving aside the cost of demands that are not even options under Articles V, VI, and VII, the union's proposed 6/3 work/rest schedule would require hiring 1686 more employees, with an additional carrying cost of more than $93 million per year. Extending the same schedule to extra board employees would not add head count, but would force Union Pacific to pay more than $56 million more in guarantee, meaning that the railroad would be spending tens of millions of dollars more per year for non-work time.

Nothing in the National Agreement even hints that the parties intended to allow for such a dramatic increase in costs. One of the most basic canons of textual interpretation is that drafters do not "hide elephants in mouseholes," meaning that they do not make important changes through "vague terms or [in] ancillary provisions." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001).[66] This canon reflects the common sense notion that when parties do something monumental, they will do so in prominent and unambiguous terms. As applied here, if the parties had intended to provide for a massive increase in compensation – over and above the already historic wage increases recommended by PEB 250 – they would have said so clearly and directly.

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[66] This canon was originally developed for statutory interpretation, but it has been extended to questions of contract interpretation as well. *See, e.g.*, *Kerber v. Qwest Grp. Life Ins. Plan*, 647 F.3d 950, 961 (10th Cir. 2011) (applying "elephants-in-mouseholes" principle to interpretation of employee welfare benefit plan).

2. *The Union's June 14, 2024 Proposal*

Article	Proposal	Headcount Change	Cost (in millions) to Union Pacific
V	4/1 rest for pool service	605	$20.77
V	5/2 rest for extra board (with no guarantee offset)	534	$70.16
VI	Automated bid only for new or vacant jobs	n/a	$0
VII	Self-supporting pools	(78)	($3.32)
VII	Pool regulation (increase pre-approved layoffs)	n/a	($5.17)
N/A (Extras not included in Articles V, VI, and VII)	Earned days off (1 per half)	51	$4.3
	Floating/banking leave	2	$0.17
	New hire leave	16	$3.71
	No forced vacation	16	$1.35
	Waiting time pay	0	$0.08
	Certification pay	0	$20.33
	RCO pay increase	0	$15.12
	Add guarantee for mandatory rest days	0	$2.28
	Personal leave days	105	$16.59
	Away from home pay	0	$15.94
	Elimination of step rates	0	$17.63
	Bereavement leave	0	$0.20
Total		**1251**	**$180.14**

After months of bargaining, the union's last offer was still nowhere close to an even trade of value. The total net cost of its proposal decreased from $343 million per year, but would still impose a net cost of more than $180 million per year. Again, that is neither a "win-win" nor the sort of "equally beneficial" exchange that SMART-TD itself has said is necessary. Moreover, while the union's revised offer finally acknowledged changes that Union Pacific is undeniably entitled to receive – such as self-supporting pools – it still included more than $95 million per year in various items – such as changes in pay, additional paid leave, and the like – that are not available under any plausible reading of Articles V, VI, and VII.

III. The Board Should Impose Workable Terms.

In addition to looking to the limits of the parties' agreement to arbitrate and principles of equity, interest arbitration panels also need to find pragmatic and functional solutions for the parties. As noted in the leading arbitration treatise:

> "The interest arbitrator's 'job is to reach a solution that will be satisfactory enough to both sides to be workable. He has to take into consideration their relative strength and their relative necessities. . . . . He has also to remember that a decision is useless if it cannot be enforced and that the power and ability of the respective parties to administer a decision successfully is an integral part of the decision itself. A decision which cannot be carried into effect or which will create lasting dissatisfaction is not really a decision at all.'"

Elkouri at 1360 (quoting Soule, *Wage Arbitration* 6–7 (1928)).

Union Pacific's proposed agreement terms satisfy this criterion too. As we now show, the railroad's proposed language adopts sensible solutions that accommodate the key interests of both sides.

A. Work-Rest for Pool Service

To be functional and effective, the terms of the parties' agreement need to allow employees in pool service to have sufficient opportunities for rest, while still ensuring that Union Pacific has an adequate number of workers to run its trains. Moreover, while the union wants additional time off, it also does not want to decrease earnings opportunities. Those results need to be accomplished without forcing Union Pacific to rely more heavily on extra board employees, given that increased use of those boards would drive up expenses dramatically, thereby foreclosing any cost savings.

Union Pacific's proposal provides the only possible path to all of those goals. *First*, it provides for more than adequate time off. Under the current system, pool service employees already have vacation, personal leave, sick leave, federally-mandated rest, and reasonable lay-off privileges. And under Union Pacific's proposal, employees in pools will have even more time off. By contrast, the union's proposed rules would go even further, reducing on-duty time to an unnecessary degree. The following chart compares current on-duty time for pool service (it does not include federally-required rest or paid time off) to the projected levels under the various options discussed by the parties:

	Current	**Union Pacific Proposal**	**SMART-TD Original Proposal**	**SMART-TD Last Proposal**
Average Weekly On-Duty Hours	27.6 hours	26.3 hours	22.9 hours	24.0 hours
Average Annual On-Duty Hours	1441.7 hours	1373.5 hours	1196.3 hours	1253 hours

It should also be emphasized, in this regard, that Union Pacific's proposal is not limited to just the 5/1 work/rest proposal. The proposed terms also include additional features that allow thru-freight pool service employes to obtain additional time off, including both (1) the option to trade turns with other employees and (2) an increase in the percentage of pre-approved lay-offs. In combination, all of these innovations – on top of the already existing options for time off – will allow for at least several more days off.

Second, Union Pacific's proposal balances employee time off with procedures that should still ensure an adequate supply of crewmembers in the pools for train operations. While expanded rest days decrease availability, the combination of self-supporting pools, pool regulation, and standing bid will, at least in part, make up the difference by increasing availability of employees in the pools whenever they are not marked off. In other words, an effective, workable resolution of this matter requires application of all three Articles. Indeed, that is why PEB 250 recommended that these issues all be handled together – there is a natural synergy between providing rest days but expanding availability to work on other days.

Third, Union Pacific's proposed approach maintains adequate availability without over-reliance on the extra boards. As noted above, extra board employees are paid a guarantee whether they work or not. Thus, increasing the size of the extra boards to account for new time off entitlements is not a workable option. It means that more employees will be paid more for not working, which is the opposite of what the National Agreement's provisions are supposed to achieve.

Fourth, Union Pacific's proposal will not decrease earnings opportunities for any employee who chooses to work more. Because the proposed rest days are voluntary, an employee can decide that they would rather work and earn more money (so long as they provide sufficient notice and do not run afoul of the limits imposed by federal law). In this regard, Union Pacific's proposed rules will function much like they do in the rest of the business world, where employees have an assigned schedule but can volunteer to work more if they wish.

B. Work-Rest for Extra Boards

In addition to providing a workable solution for pool service, Union Pacific's proposal does the same for extra boards. The issue on the extra boards is not so much the lack of adequate rest, but the lack of certainty. The nature of extra board service is inherently unpredictable, and so employees do not know in advance whether they will be working a lot or not at all. Union Pacific's proposal solves for this by:

- Expanding Smart Rest, which allows extra board employees to control their schedule and obtain rest when they want it;
- Regulating the pools in a more precise fashion, which ensures that there are not too many or too few employees on the extra board at any given time;
- Shifting more employees from the extra boards to the pools, which thereby reduces the number of employees who have uncertain schedules; and
- Decreasing unavailable time between jobs through standing bid.

Here again, all of the different elements of Articles V, VI, and VII need to be combined for this to work.

The union's proposals, by contrast, are more about increasing compensation for extra board employees than solving for rest and availability issues. SMART-TD has repeatedly insisted on a "compressed guarantee," which means that employees would be paid the same for 12 (or fewer) days of availability as they are currently paid for 15 days. That is completely contrary to the whole point of the guarantee, which is to provide an assurance of compensation in exchange for availability.[67]

C. Standing Bid

When it comes to a job assignment system, Union Pacific's proposed "standing bid" approach is indisputably workable. As noted above, some version of standing bid is already in place on the railroad. Unlike the rules adopted on other railroads, standing bid has a proven history of achieving the desired results.

Indeed, the main question in this proceeding is simply whether standing bid should replace the few remaining alternatives, such as the "daily preference" boards, that are a vestige of years gone by. Given that standing bid has already proven to be effective at securing availability and providing employee choice, there is no reason why it cannot work everywhere on the Union Pacific network. Imposing consistent system-wide rules is fair, easy to administer, and an incremental approach that avoids the sort of potential disruptions that an entirely new system could cause. *See* Report of Emergency Board No. 242 at 48-49 (changes should, where possible, be incremental).

[67] *See. e.g.*, *SMART-TD v. CSXT*, PLB No. 7700, Award 3 (2017) (Zusman, Arb.) (collecting cases); *UTU v. Union Pacific R.R.*, SBA No. 18, Award 5503 (1983) (Vernon, Arb.) ("The quid pro quo of trainmen availability for a guaranteed income is implicit in the rule"). As these awards find, employees are not entitled to be paid when unavailable due to Hours of Service limits.

Likewise, a shift to a 24-hour displacement period (with automatic notification) is designed to benefit both Union Pacific and its employees. As noted above, displacement periods generate increased unavailability and decrease earnings opportunities. In the 21st century, there is no longer any reason for a long displacement period – modern communications and transportation allow for much faster transitions between jobs. But doing away with a displacement period altogether would also be problematic, given the potential risk of short-term furloughs for junior employees as jobs reshuffle. Hence, a 24-hour displacement period is an effective compromise.

D. The Union's Proposed Terms Are Not Workable.

In contrast to Union Pacific's proposal, SMART-TD is seeking rules that would be difficult to implement and would cause havoc for both the railroad and the employees. In particular, as noted above, a voluntary 6/3 work/rest day schedule would cause a 33 percent increase in unavailability in pool service. In response, Union Pacific would need to either increase the size of the pools or increase the size of the extra boards. If it increases the size of the pools, earnings opportunities will go down; employees will make less money. And if people do not take their rest days, the railroad will have excess staffing, leading to furloughs. Likewise, if Union Pacific were to increase the size of the extra boards, it will be paying more in guarantees, which as explained above is paid whether people work or not. Moreover, given the uncertainty about whether employees would take their rest days, extra board employees would also be subject to the risk of furloughs, which is, of course, disruptive to employees, but also undermines Union Pacific's ability to hire when conditions change.

IV. THE OTHER CARRIERS' AGREEMENTS ARE NOT APPROPRIATE MODELS.

During the course of bargaining, SMART-TD sought terms mirroring those found in other carriers' agreements. SMART-TD appears to believe that because other railroads have agreed to such terms, they should also be imposed on Union Pacific. For several reasons, that is not so.

A. Reliance on Other Carrier Agreements is Inherently Inconsistent With the Design and Intent of Articles V, VI, and VII.

The 2022 National Agreement is a product of "national handling," which is a form of coalition bargaining in which multiple railroads band together to seek a joint agreement with each union. The carriers often rely on national handling because it can be successful in bringing about industry-wide agreements without strikes, it reduces the number of disputes, minimizes "leapfrogging," and ensures consistency in outcomes.

There are, however, a number of important differences among the Class I rail carriers, especially with respect to work rules for the operating crafts. Over the course of many years, each large carrier has adopted its own idiosyncratic approach to matters such as train crew scheduling, assignments, bidding, and the like. Each carrier also has its own unique employee culture. Accordingly, when those issues come up in national handling, there may not be a one-size-fits-all approach. To account for that, the parties have used various mechanisms to address work rules in national bargaining, including "dual track" bargaining (*i.e.* simultaneous negotiations at both the national and local carrier levels) and/or referral of specific issues to local negotiation following a national agreement, either with or without an arbitration backstop.

In this case, the parties adopted the latter course, providing for ***separate*** negotiations over the subjects addressed in Articles V, VI, and VII. As such, the National Agreement was specifically designed to allow for ***different*** solutions for each carrier, permitting them to adapt the rules to their varying local circumstances and needs. The bargaining history makes this quite clear. In the carriers' submission to PEB No. 250, the carriers explained that their job assignments and scheduling proposals were intended to

> "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 to them."[68]

The emergency board agreed, acknowledging that issues such as "bidding, pools and extra board processes" are most appropriately addressed "at the Carrier-specific level."[69]

That is why Articles V, VI, and VII provide for a separate bargaining and arbitration process at each carrier. That is why Articles VI and VII, in particular, allow the parties to negotiate and arbitrate "carrier-specific implementation matters," with separate carrier notices on different subjects.[70] Having agreed to this process for reaching separate agreements on each carrier, SMART-TD cannot now plausibly suggest that any individual carrier must look to its peers' agreements for the terms to be imposed. The whole point of the National Agreement was to allow for different agreement terms when implementing Articles V, VI, and VII.

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68 Ex. 32 (Carriers' Work Rules Submission to PEB 250) at 22 n.12.

69 Ex. 4 (PEB 250 Report) at 90.

70 Ex. 1 (2022 National Agreement) at 9, 11, 20-21.

B. All of the Other Carrier Agreements Are Distinguishable as Voluntary Settlements.

One of the advantages of reaching agreements through collective bargaining is that, in doing so, parties are free to agree to almost anything. So long as they act mutually, parties can insert new ideas or concepts, dispense with old limits or restrictions, or even go beyond the scope of what they had originally agreed to discuss. In that respect, voluntary negotiations are almost always preferable to interest arbitration. Not only do the parties give up some degree of control in arbitration, but – as discussed above – any interest arbitration is cabined to the specific terms that the parties have agreed to arbitrate. *See supra* at 37 - 39. There is, in other words, somewhat less flexibility in crafting an agreement through arbitration than there would be in bargaining for one.

These principles help to illuminate why the other railroads' negotiated agreements are not apposite. In order to reach agreement on scheduling and work assignments, some of the other carriers were – to a greater or lesser extent – willing to provide benefits that go beyond Articles V, VI, and VII. For example, BNSF's agreement with SMART-TD includes, among other things, provisions for work/rest schedules for yard employees, "earned days off," held-away-from home pay, vacations, bereavement leave, and certification pay.[71] Likewise, Norfolk Southern's agreement includes provisions for meal allowances, weekend differentials, paid sick leave, and personal leave days.[72] Although

[71] Ex. 34 (BNSF and SMART-TD Memorandum of Agreement (2023)) at Section IV, Part 1.B, Section VII, & Sections IX—XIII.

[72] Ex. 35 (Norfolk Southern and SMART-TD Agreement (2023)) at Arts. III, V, VII, & VIII.

they were not obligated to provide any of that under Articles V, VI, and VII, both railroads voluntarily elected to include those items in order to reach agreement.

None of those provisions are available here, where SMART-TD chose not to reach a voluntary agreement. As explained above, once it went down this path, the union limited itself to the matters that the parties had previously agreed to submit to arbitration, *i.e.*, rest days for thru-freight road service, bid scheduling, self-supporting pools, pool regulation, and the other questions of "implementation" specifically addressed in Articles V. VI, and VII. *See supra* at 37 - 39. In other words, by invoking arbitration, SMART-TD has forfeited any basis for demanding any of the extras that the other railroads were willing to provide, and so those other carriers' agreements do not provide a template to be applied here. This Board should not "coerce by arbitration" anything beyond what "clearly emanates from the PEB's narrowly fashioned parameters," including the terms of the other carriers' agreements.[73]

C. The Norfolk Southern Agreement is Not Appropriate For Union Pacific.

In addition to the fact that the other carriers' agreements address topics that go beyond the requirements of Articles V, VI, and VII, the cost of those agreements would be prohibitive if their terms were applied to Union Pacific. This is due, in part, to the differences between the carriers vis-à-vis the work rules they had in place prior to implementing Articles V, VI, VII, as well as differences in their operating practices, customer mix, geography, and size.

[73] Ex. 3 (CPKC Arbitration Award) (Oct. 14, 2024) at 8-9.

Norfolk Southern, in particular, is and was very different from Union Pacific in several important respects. For example, prior to the 2022 National Agreement, Norfolk Southern lacked any form of auto-bid or standing bid. It relied on an antiquated bulletining and bidding process. As a result, it had roughly 200 trainmen who were, at any given moment, unavailable because they were in the midst of reshuffling assignments. Thus, Norfolk Southern stood to gain quite a bit from Article VI. In addition, Norfolk Southern already had a work/rest agreement in place for road extra board employees. Thus, the only issue it faced under Article V was rest days for employees in thru-freight pools. The railroad had to add about 200 employees when it agreed to provide a 6/2 rest day schedule under Article V, but it gained availability for about that same number in adopting auto-bid under Article VI.[74] After adding in the impact of self-supporting pools under Article VII, the overall result was a wash, which, as explained above, is exactly what the National Agreement was supposed to achieve.

By contrast, Union Pacific would need to add about 1,000 employees to provide a 6/2 work/rest schedule to its employees in thru-freight service. Moreover, because Union Pacific already has enhanced standing bid for many of its operating craft employees, it would not gain much if any benefit from Article VI. Thus, the Norfolk Southern agreement, as written, would impose huge net costs on Union Pacific. That is contrary to the fundamental principle, discussed above, that implementation of Articles V, VI, and VII should reflect an equal exchange.

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[74] Ex. 35 (Norfolk Southern and SMART-TD Agreement (2023)).

Another problem with using the Norfolk Southern agreement as a model is the difference in how the carriers manage their extra boards. The Norfolk Southern 6/2 schedule would afford a baseline availability of, at best, 75 percent (as compared to Union Pacific's proposed 5/1 schedule, which provides for 83 percent baseline availability). In addition, the Norfolk Southern agreement does not account for the off days in its pool regulation, which means that the carrier will need to rely on larger extra boards to fill in. Union Pacific has much higher guarantees on its extra boards, and therefore the cost of the Norfolk Southern agreement would be prohibitive on this ground as well.

This problem would be further exacerbated if the rest days are voluntary, not mandatory. As discussed above, when rest days are voluntary, there is no way to know whether employees will take the time off or not. Because Union Pacific has to be able to staff its trains, it needs to maintain a workforce that is large enough to account for the prospect that employees will take their rest days. But if that does not happen, the excess employees would be subject to furlough. That kind of variability – rapid hiring followed by furloughs, driven by variations in rest day usage – is not in the interest of either the carrier or the employees. Moreover, any excess employees who are not furloughed would remain on the extra boards, where they would be paid a guarantee for not working.

The Norfolk Southern agreement provides for mandatory rest days, and thereby avoids some of these problems. However, SMART-TD has been unwilling to accept mandatory rest, despite acknowledging the problems that voluntary rest days would cause if imposed on Union Pacific.

D. The BNSF Agreement is Not Appropriate For Union Pacific.

For similar reasons, the BNSF agreement with SMART-TD is also not a good template for this case. As with Norfolk Southern, the BNSF agreement provides for voluntary rest days, with no way to predict when those days will or will not be taken.[75] Thus, it presents the same issue with potential for furloughs or insufficient numbers of employees to run trains. The BNSF agreement also has provisions for continued use of extra boards, limiting the carrier's right under Article VII to abolish existing extra boards and replace them with combination extra boards. It also inflates reliance on the extra board by failing to account for use of rest days in its pool regulation mechanisms. Here again, those provisions would be especially costly on Union Pacific, given its higher guarantee rate.

Even more importantly, the BNSF work/rest provisions would be wholly inadequate for Union Pacific's operations. The BNSF agreement provides a "preferred" or "primary" 6/3 schedule.[76] That would be an availability rate of only 67 percent – even worse than the Norfolk Southern work/rest schedule. As discussed above, Union Pacific would need to add more than 1600 employees to provide a 6/3 work/rest schedule, thereby imposing a massive cost that would far outweigh any possible benefit that Union Pacific might realize from the benefits of standing bid, self-supporting pools, and pool regulation. *See supra* at 56.

[75] Ex. 34 (BNSF and SMART-TD Memorandum of Agreement (2023)) at Section IV, Part 1.B.1.

[76] *Id.*

Indeed, soon after implementation of the new 6/3 schedule, publicly available data shows that BNSF was holding more trains for lack of crews, thereby decreasing system velocity.[77] Those problems were undoubtedly the result of the massive spike in unavailability caused by the new work/rest schedule. Aside from the increased unavailability inherent in a 6/3 work/rest schedule, any trainman with available paid leave – such as sick leave or personal leave – would be able to take that leave during the 6-day work period and thereby avoid work entirely for significant periods of time. That would likely have a major impact on operations.

The BNSF agreement includes provisions that allow for re-negotiation (and, if necessary, arbitration) if either party believes that the work/rest schedule is not meeting the objectives of the agreement, which include "ensur[ing] availability of a sufficient number of trainmen" and "minimiz[ing] cost increases to the Carrier."[78] Thus, the parties to that agreement may be able to find a pathway to a different and more workable schedule. However, it certainly makes no sense for Union Pacific to adopt an approach that has already proven to be unworkable and is only generating disputes between SMART-TD and one of the other carriers. The BNSF agreement is neither equitable from a cost-benefit perspective or functional from an operational perspective, and so should not be the basis for an agreement between Union Pacific and SMART-TD in this case.

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[77] Ex. 36 (BNSF Surface Transportation Board ("STB") Data) (average number of trains held on daily basis due to crew issues increased from 25.94 in 2023 to 37.24 in 2024).

[78] Ex. 34 (BNSF and SMART-TD Memorandum of Agreement (2023)) at Section IV, Part 1.

V. THERE IS NO MERIT TO THE UNION'S OTHER ARGUMENTS.

In addition to pointing to other carrier agreements, the union has raised two other subsidiary arguments during bargaining. Neither one justifies the union's preferred outcome or mandates any adjustments to Union Pacific's proposed terms.

A. There is No Bar to Changes on the Former International Great Northern and Texas & Pacific Properties.

In a letter dated July 24, 2024, SMART-TD argues that Article VII(b)(6) of the 2022 National Agreement – which permits the carrier to "abolish or establish road, yard or combination extra boards" – cannot apply to the portions of Union Pacific corresponding to the former International Great Northern ("IGN") and Texas & Pacific Railway ("T&P").[79] The union points to the so-called "moratorium" provisions in a pair of 1993 arbitrated agreements covering those properties, claiming that they bar any changes to those agreements except "by mutual consent."[80]

For several reasons, the union is wrong. First, as SMART-TD acknowledges, the IGN and T&P agreements do not bar all changes, but rather provide only that changes must be made by "mutual consent." Here, the parties *did* "consent" to make the changes provided in Article VII, including Article VII(b)(6). While the concepts that were incorporated into Article VII were recommended by PEB No. 250, the actual agreement terms were negotiated and agreed to by the parties.[81] SMART-TD was an active

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79 Ex. 37 (July 24, 2024 Letter from SMART-TD to Union Pacific).

80 *Id.* at 1.

81 Ex. 33 (Branon Decl.) ¶¶ 8-10.

participant in those negotiations, and had every opportunity to seek an exception for the IGN and T&P properties, but never did so. Accordingly, the IGN and T&P moratoriums are, by their terms, inapplicable.

Second, even if the other provisions of the 2022 National Agreement were not sufficiently clear, Side Letter No. 5 confirms that the parties did not intend to exempt the IGN and T&P properties. As noted above, Side Letter No. 5 specifically and expressly lists where each side may serve notices under Articles V, VI, and VII.[82] For Union Pacific, Side Letter No. 5 states that "Union Pacific may serve notice regarding the subjects in Article VI and Article VII," period.[83] There is no carve-out for the IGN and T&P properties. Moreover, it is obvious that the parties understood how to create an exception when they wanted one. In the section addressing Kansas City Southern, for example, Side Letter No. 5 *does* contain an exception, identifying a specific property where the parties agreed that no Article VII notice could be served.[84] The absence of any similar language for IGN and T&P demonstrates that Article VII must fully apply on those properties.

Third, SMART-TD is wrong when it suggests that the 1993 arbitrated agreements are "safeguard[ed]" from "being altered or nullified by broader national negotiations or

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[82] Ex. 1 (2022 National Agreement) at 20-21 (Side Letter No. 5).

[83] *Id.* at 21.

[84] *Id.* at 20 (providing that "KCS may serve notices regarding the subjects in Article VII on the KCS property . . . except with respect to Pool Regulation on the MidSouth property."). There is a similar carve-out for certain portions of BNSF. *Id.*

any boards pertaining thereto."[85] As general matter, there is absolutely no support for the idea that national (*i.e.* multi-carrier) agreements cannot modify earlier local agreements.[86] And in this case in particular, nothing in the 1993 agreements says or even hints that they are immune from modification through a subsequent national agreement.

Fourth, even if the union were right that the old moratoriums applied in this case, they would, at most, only bar changes to the "specific provisions" of the IGN and T&P agreements.[87] Very little, if anything, in Article VII would require changes to those older agreements. Moreover, if the Board did conclude that any aspect of Article VII could not apply to the IGN and T&P properties, it should likewise conclude that it would be improper to provide for rest days under Article V on those properties. The changes under Article VII are, as explained above, the *quid pro quo* for rest days, so if the carrier is not entitled to those benefits, then the employees should not receive any benefits either.

B. The Parties Have Engaged in Sufficient Bargaining.

Throughout the bargaining process, SMART-TD suggested that Union Pacific was behaving unreasonably in refusing to accede to the union's demands. Matters came to a head in the final negotiation session in Las Vegas scheduled for June 3-6, 2024, when the union canceled the third day of bargaining and indicated that it would prepare for

[85] Ex. 37 (July 24, 2024 Letter from SMART-TD to Union Pacific) at 3.

[86] It is black letter law that a new agreement will, absent specific terms to the contrary, modify and supersede any existing agreement covering the same parties and addressing the same or related subjects. *See, e.g.*, 17 Am. Jur. 2d Contracts § 489 (2024); Elliott on Contracts, § 1869; Page on Contracts (1st Ed.), § 1340; Williston on Contracts, §§ 723 and 926.

[87] Ex. 38 (*Union Pacific R.R. Co. and UTU*, Arb. Panel No. 18 (Aug. 6, 1993) (Seidenberg, Arb.) at Attachment B (Arbitrated Agreement), Art. V(2)(a).

arbitration. SMART-TD then complained when Union Pacific did not attend a negotiation session in Dallas that had been set for June 17-20 prior to the Las Vegas impasse, and has subsequently asserted that Union Pacific has unreasonably refused to engage in further negotiations.[88] The implication in the union's argument is that the Board should order the parties to return to the bargaining table rather than resolving the substance of their dispute.

An award that just provides for further bargaining – without more – would ***not*** be an appropriate outcome in this case. Union Pacific strongly disagrees with the union's characterization of how the bargaining unfolded. But regardless of who is at fault for the failure of negotiations, it should be painfully obvious that the parties have exhausted every reasonable effort to reach a voluntary agreement. Over the last two years, the parties met many times and exchanged dozens of written proposals and counterproposals. With the possible exception of Article VI – where both sides appear to be amenable to some form of standing bid – the parties have made little progress toward resolving any of the key issues. Indeed, the union's most recent June 14 proposal was blatantly regressive, retrenching from the union's early June position in multiple respects.

The time has come to resolve this issue once and for all. Virtually all of the other parties to the 2022 National Agreements – both BLET and the other railroads – have

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[88] Ex. 39 (Jun. 20, 2024 Letter from Union Pacific to SMART-TD) (offering to meet in July 2024); Ex. 40 (Jun. 20, 2024 Letter from SMART-TD to Union Pacific) (accusing Union Pacific of "abandoning" negotiations); Ex. 40 (Jun. 26, 2024 Letter from SMART-TD to Union Pacific) (asserting that Union Pacific "disregarded the vast majority of the Organization's proposed provisions and caused the parties to debate issues over and over again at each meeting").

settled their Article V, VI, and VII issues. The purpose of interest arbitration is to "to provide the 'end game' to an otherwise unsuccessful negotiation attempt and, in that context, to fashion, to the best of one's ability, an agreement that best represents the bargained result the parties would have achieved." *Bethlehem Steel Corp. v. United Steelworkers of America*, at 6 (1996) (Bloch, Arb.). Thus, rather than continuing to kick the can down the road, this Board should "determine the deal the parties should have reached during negotiations." *Village of Sparta, Ill.*, 130 Lab. Arb. (BNA) 1086, 1091 (2012) (Betts, Arb.).

If, however, the Board were inclined to return the parties to the bargaining table, it should – at the very least – impose general parameters for an agreement. In particular, the Board should provide that any agreement must be (1) limited to the subjects addressed in Articles V, VI, and VII; (2) equitably balanced from a cost perspective; and (3) workable.

CONCLUSION

For the foregoing reasons, Union Pacific respectfully requests that the Board adopt the carrier's proposed agreement, attached as Exhibit 7, to implement Articles V, VI, and VII of the 2022 National Agreement.

Respectfully submitted,

/s/ Donald J. Munro

Donald J. Munro
Thomas R. Chiavetta

Counsel for Union Pacific Railroad Company

Date: January 2, 2025

This Agreement will set for the terms, conditions, and application of Article V, Article VI, Article VII, and Presidential Emergency Board (PEB) 250 Local Work Rule Proposal for the following territories (excluding all passenger service) on the Union Pacific Railroad:

Union Pacific Eastern District (UPED)
Former Chicago & Northwestern (CNW)
Former Oregon Division Northwestern District
Former Southern Pacific Western Lines (SPWL)
Former Missouri Pacific Upper Lines (MPUL)
Former International-Great Northern Railroad Company (IGN)
Former Texas Pacific (TP)

Article V – Scheduled Days Off for Thru Freight Road Service

A. Pool Freight Service

1. All pools will have a schedule of five (5) work/available days followed by one (1) voluntary rest day. Employees who elect not to observe the voluntary rest day must notify the Carrier 48 hours in advance of the rest day and will be subject to RSIA.

   NOTE 1: If an employee elects not to observe the rest day and is subject to rest pursuant to federal requirements (FR/FZ), the employee's next five (5) work/available day cycle will begin upon mark up from FR/FZ.

   NOTE 2: Employees electing to observe a rest day may request to be paid a compensated day by making electronic request to Timekeeping.

   NOTE 3: Any agreement provisions providing for "turn rest" will be eliminated.

2. Pool Guaranteed Provisions

   a. Guaranteed pool boards will be paid at their current guarantee rate of pay on a per half basis pursuant to existing agreements.

   b. A trainperson observing their 24-hour rest period (or any portion thereof) will be considered unavailable during that time and the per-half guarantee will be reduced for the applicable rest day period. However, the rest days will not be considered for forfeiture purposes.

   c. An employee assigned to a guaranteed board laying off in any non-compensated status/unavailable time, or in a paid sick (PS) status, will have their guarantee and bonus day forfeited for the half and will only be paid actual earnings.

   d. For all other compensated layoffs, excluding Paid Sick (PS), the guarantee will be treated for guarantee purposes pursuant to existing agreements, interpretations and practice.

B. Road Extra Boards

1. A trainperson assigned to a road extra board will activate mandatory undisturbed rest (24 total hours between consecutive trips) to break consecutive RSIA starts at their home terminal after working five (5) consecutive trips/tours of duty as defined below.

    1. A single or continuous trip/tour of duty under FRA interpretation of the freight Hours of Service Laws pursuant to the 2008 Rail Safety Improvement Act (RSIA) will similarly constitute a single or continuous trip/tour of duty under the terms of this agreement. Consecutive trips/tours of duty are defined as initiated back-to-back starts without being separated by at least a twenty-four (24) hour rest period between the off-duty time of the previous trip/tour of duty and the on-duty time of the next trip/tour of duty. The time encompassed in normal layover/rest time between trips, as well as layoffs (compensated and/or uncompensated) or any other time off (i.e., missed call, no show, etc.) totaling twenty-four (24) hours or more in the aggregate, will serve to reset the consecutive trip counter.

    2. When a trainperson completes their fifth consecutive trip/tour of duty at other than the home terminal, the employee will work or deadhead to their home terminal and then the required rest period will begin in accordance with Section B.1 or pursuant to federal requirements (RSIA), whichever is applicable.

    3. While a trainperson is at the home terminal observing undisturbed rest time off they will continue to move/advance in the rotation until they become available or the turn will be held in the first-out position until the trainperson is rested and called for service.

2. Extra trainpersons observing the undisturbed rest will not be considered “unavailable” for guarantee purposes.

3. Extra trainpersons unavailable in a non-compensated status, or in a paid sick (PS) status, for more than one (1) occurrence, or being unavailable in a non-compensated status for more than 48 hours, per pay period will have their guarantee suspended for that pay period.

C. The parties recognize that in order to meet a customer’s immediate service need, or to meet operation exigencies at a time a protecting crew is not present and available in the terminal for such service, and time will not permit calling a rested extra employee, a qualified employee may be used, without penalty, to perform such service.

D. Other forms of optional or mandatory work rest models, including SMART rest, may be implemented by mutual agreement.

Article VI – Automated Bid Scheduling

A. All vacancies, including pool and extra board positions which are newly created or become vacant, will be filled by the senior trainperson with an application on file with Crew Management.

B. Applications may be changed or withdrawn until assigned. Once assigned, the trainperson must remain thereon unless displaced by a senior trainperson, awarded to a new bid by application, or obtains displacement rights.

C. Newly established yard, local, assigned road, and/or unassigned road assignments will be bulletined for a period of 72 hours. At the expiration of the bulletin, the position will be awarded to the senior trainperson with an application on file with Crew Management.

D. This section will apply when any assignment is re-bulletined due to a change in assignment as set forth below:

Yard Assignments
1) Change in start time of 1 hour or more, cumulative within the year;
2) Location of yard assignment change; or
3) Assigned rest days change.

Assigned Road Service
1) Change to the starting time of two hours or more;;
2) Any change to mileage of the assignment;
3) Any change in the number of days per week scheduled to work;
4) Any change in the terminal point or points; or
5) Assigned rest day change.

E. Trainpersons are responsible for maintaining their bids and applications for regular assignments. Applications will include the priority of assignment if more than one application/bid is being filed. Once an assignment is awarded, lower priority applications (lower than the one awarded) will be removed from the system, and it will be incumbent on the trainperson to reapply for those positions should they so desire.

F. A senior trainperson who is absent from service for the life of the bulletin for newly established bulletined positions will be permitted to displace the assigned junior trainperson so long as they declare "non-access" to the advertised position by the end of their first tour of duty after returning to service.

G. Permanent vacancies that are created by what is known to be an extended absence (excluding vacation) of fifteen (15) days or more may be filled by the senior trainperson with application/bid on file. Employees absent without proper authority in excess of fifteen (15) days will forfeit their seniority.

H. Should an employee not exercise seniority within twenty-four (24) 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 manner:

   1. Any open assignment.
   2. Displace the junior trainperson in the hub.

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

   1. Junior employee with an expired bump.
   2. Junior employee in the hub or junior employee on an extra board at that location.

J. Any existing agreement provisions allowing for "temping" or "oldheading" of vacancies, as well as any rules pertaining to "pass-up" or "giving-up" of any assignment, riding a bulletin and "force bumping" are eliminated.

K. Employees called to fill a vacancy on an assigned job at an outlying point must remain on the assignment for the duration of the vacancy or until the scheduled off days of the assignment being filled begins, if applicable.

L. Displaced trainpersons must exercise their seniority within twenty-four (24) hours of proper notification by Crew Management of their displacement. In the event a trainperson 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 trainperson's personal file in the crew management system, one time each and leaving a message, if possible. Such attempts will be documented in the trainperson's work history, as well as CMS placing an electronic message in the trainperson's crew management system screen portal. CMS speaking with the trainperson, receiving a call back from the trainperson, or the trainperson's acknowledgement will not be necessary to satisfy this requirement.

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

   1. For trainpersons displaced while on duty or at the away-from-home terminal, the twenty-four (24) hour displacement period will begin at final tie-up/final release at the home terminal without the need for additional phone notification by CMS.

   2. For trainpersons displaced while unavailable (e.g., compensated, non-compensated, HOS rest, rest period extensions, vacation extensions, assigned rest days, RSIA rest period, company business, union business, etc.), the twenty-four (24) hour displacement period will begin upon completion of such unavailability period. Nothing prohibits trainpersons from accepting notification during such unavailable period.

M. When a trainperson is displacing to a pool, the most junior on the pool must be displaced and the trainperson will assume the rest days of the position. If a trainperson is displacing to an extra board, the most junior trainperson on the extra board will be displaced.

Article VII – Pools and Extra Boards

A. Self-Supporting Pool:

1. When a turn becomes first out at the home terminal and the assigned trainperson is unavailable at call time (except for statutory rest), their turn will be removed from the board and placed to the bottom of the board upon mark up. The next rested and available trainperson on the board will become first out and will stand for the service called.

2. When the board is exhausted, a made-up turn may be added to the board at the home terminal. The made-up turn will take its turn to the away-from-home terminal and will be removed from the pool upon tie-up at the home terminal. The made-up turn will be protected by a rested and available trainperson in assigned or unassigned service at the location where the vacancy exists. If there is no available trainperson at the location where the vacancy exists, a he rested and available trainperson at the next closest point of supply will be used.

3. The turn of a trainperson observing statutory rest and/or mandatory reset period will continue to rotate up the board and will remain first-out when that position is reached.

4. Home and Away from Home terminals will be operated on a first in/first out basis 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.

5. Drop turns, step-up make whole, or any other provisions providing for additional allowances/penalty payments (i.e. performing hours of service relief) if applicable, are hereby eliminated.

6. Employees working on a pool freight board will be used to perform hours of service relief/short turnaround service and unassigned work train service prior to the extra board. Trainpersons used in hours-of-service relief will be compensated one trip rate and be placed back to the top of the board upon tie up.

   NOTE: Nothing in this section prevents the use of other crews to perform work currently permitted by prevailing agreements, including but not limited to, yard crews performing Hours of Service relief within the road/yard zone, a rested and available extra board employee when the pool board is exhausted, local service within their bulletin limits or road (traveling) switchers within their zones.

B. Pool and Extra Board Regulation

1. Non-Guaranteed Pool Regulation:

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

Pool Mileage	Pool Factor
Up to 150	Between 18.3 and 19.9
151-180	Between 16.6 and 18.3
181-230	Between 15.8 and 17.4
231-260	Between 14.1 and 15.8
261-290	Between 12.5 and 14.1
291 or greater	Between 11.6 and 13.3

NOTE: The determined monthly starts target listed in the table may be modified by mutual agreement.
All non-guaranteed pool adjustments will be made every Wednesday. 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, 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 six (6). The total equals the number of turns needed for pool operations.

b. 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 230 starts in the 20-day look back and has a mid-range of 15. There are 25 days of scheduled time off (LV, PL, etc.) in the 7-day look ahead.

230 x 1.5 = 345 projected starts for the month.
345 starts divided by the mid-range factor of 15 =23 positions.
The board has 25 total days of time off (LV, PL, etc.) scheduled in the upcoming 7 days.
25 divided by 6 = 4.17 or 4 positions.
23 positions + the 4 positions to account for scheduled time off = 27 positions.

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

d. Due to an abnormal influx (or absence) of traffic operating over a particular pool's run, the parties may mutually agree to use a 10-day check period (look-back) to minimize the long-term effect of the traffic variability. Should this occur, the multiplier will be 3 versus 1.5.

2. All pool freight service will operate on a first in/first out basis. When marking up from a compensated or non-compensated layoff, the trainperson will be placed at the bottom of the board.

3. Guaranteed Pool and Extra Board Regulation:

    a. The Carrier will have full discretion on regulation of guaranteed pools and extra boards.

    b. The Carrier may establish, abolish or combine any road, yard or combination extra boards based on the needs of service along with the appropriate vacancy procedures to protect service.

C. Workforce predictability and flexibility:

1. Pre-arranged Layoff System

    a. All pool freight and extra boards' prearranged layoff system (PALS) thresholds for compensated time off (vacation and personal leave) will be increased to no less than 5% of the respective board each day.

    b. Employees will have the ability to schedule prearranged days 180 days in advance but no later than the Sunday before the regulation date to observe a pre-arranged day the following week. Once scheduled, the days cannot be taken away or denied by the Carrier.

    Example: All non-guaranteed pool regulation is administered on Wednesdays. Employee Jones would like to take a prearranged vacation day on Thursday, June 27th. A request for June 27th must be made no later than Sunday, June 23rd.

    c. Employee cancellation of prearranged days must be no later than the Sunday prior to regulation day of the upcoming week.

    Example: Building off the example in paragraph b, Employee Jones successfully entered a prearranged day on June 20th to use on Thursday, June 27th; however, on Monday, June 24th, Employee Jones decided they no longer needed the day off and wants to remove the prearranged vacation day. Since the prearranged day must be removed the Sunday before the regulation day, or Sunday, June 23rd, Employee Jones may not remove the prearranged vacation day.

    d. Unless advanced or deferred, all prearranged days will begin at 00:01. Trainpersons assigned to pool freight service and extra boards will be allowed to advance or defer their prearranged days up to sixteen (16) hours. Assigned jobs will not advance or defer their prearranged day.

2. To increase employee work schedule flexibility, trainpersons in OK status on the same non-guaranteed freight pool board may elect to swap positions/turns utilizing the following terms and conditions:

   a. Both trainpersons must be available and fully rested at the home terminal at the time the trade is requested and executed. The trainperson that is advancing in the pool must be rested at the time of the trade request.

   b. Such trade must be mutually agreed by both trainpersons involved. Trainpersons will utilize the computer system to request and accept the trade. By doing so they both agree to the trade, and no claims will be filed by any party because of the trade.

   c. Once a trade between two trainpersons has been completed, a subsequent trade by either of the involved trainpersons will not be allowed until they have performed compensated service.

   d. Trainpersons may initiate up to 12 trade requests per year. However, trainpersons have unlimited amount that they can accept from requests.

NATIONAL RAILWAY LABOR CONFERENCE

251 – 18th STREET, SOUTH, SUITE 750, ARLINGTON, VA 22202 / TELEPHONE: 571-336-7600 FAX: 571-336-7605

BRENDAN M. BRANON
Chairman

JEFFREY F. RODGERS
Vice Chairman

MATT HOLT
Director of Labor Relations

November 1, 2019

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Mr. Jeremy Ferguson
President, Transportation Division
International Association of Sheet Metal, Air,
Rail and Transportation Workers (SMART-TD)
24950 Country Club Blvd, Suite 340
North Olmsted, Ohio 44070

Dear Mr. Ferguson:

The rail freight carriers represented by the National Carriers' Conference Committee (NCCC) for the 2020 wage, rules and benefits round of collective bargaining intend to bargain on a concerted national basis with respect to their employees represented by your organization, as has been the case generally in all past bargaining rounds since the 1930's. Those carriers have authorized NCCC representation by duly executed powers of attorney and are listed in Attachment A hereto. That list will be supplemented from time to time as additional carriers authorize representation by the NCCC in national handling with respect to your organization.

Attachment B comprises a notice served nationally on your organization on behalf of these carriers pursuant to Section 6 of the Railway Labor Act. It is served upon you as the national representative of your organization and the carriers propose it be handled nationally and concurrently with any Section 6 proposals that may be served by your organization.

We believe that national handling represents the best opportunity for your organization and the freight railroads to manage our way to and through the next round of collective bargaining in a manner that serves the mutual interests of our respective constituents and their separate interests as well.

Under Section 6, the parties are required to conduct an initial conference. Please contact me so that we can schedule a date and time to meet.

Yours very truly,

Brendan M. Branon

Brendan M. Branon

Attachments

cc: All NCCC-represented carriers

ATTACHMENT A

CARRIERS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE WITH RESPECT TO INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS, TRANSPORTATION DIVISION

Alameda Belt Line
Alton & Southern Railway Company
The Belt Railway Company of Chicago
Bessemer and Lake Erie Railroad Company d.b.a. C.N.
BNSF Railway Company
Central California Traction Company
Consolidated Rail Corporation
CSX Transportation, Inc. - 1
- Baltimore & Ohio Railroad Company (Former)
- Baltimore & Ohio Chicago Terminal Railroad Company (Former)
- Chesapeake & Ohio Railway Company (Former)
- Chicago & Eastern Illinois Railroad Company (Former)
- Clinchfield Railroad Company (Former)
- Consolidated Rail Corporation (Former)
- Toledo Terminal Railroad Company (Former)
- Monon Railroad Company (Former)
- Pere Marquette Railroad Company (Former)
- Seaboard Coast Line Railroad Company (Former)
- Western Maryland Railroad Company (Former)
- Richmond Fredericksburg & Potomac Railroad Company (Former)
- Gainesville Midland Railroad Company (Former)

Grand Trunk Western Railroad Company d.b.a. C.N.
Illinois Central Railroad Company and Chicago, Central & Pacific Railroad Company d.b.a. C.N.
Indiana Harbor Belt Railroad Company
The Kansas City Southern Railway Company
- Kansas City Southern Railway
- Louisiana and Arkansas Railway
- MidSouth Rail Corporation
- Gateway Western Railway
- SouthRail Corporation
- Tenn. Rail Corporation
- Joint Agency

Longview Switching Company
Los Angeles Junction Railway Company
New Orleans Public Belt Railroad Corporation - 2
Norfolk & Portsmouth Belt Line Railroad Company
Norfolk Southern Railway Company

ATTACHMENT A
SMART-TD
Page 2

The Alabama Great Southern Railroad Company
Central of Georgia Railroad Company
The Cincinnati, New Orleans & Texas Pacific Railway Co.
Georgia Southern and Florida Railway Company
Tennessee, Alabama and Georgia Railway Company
Tennessee Railway Company

Northeast Illinois Regional Commuter Railroad Corporation (METRA) - 1
Northern Indiana Commuter Transportation District – 1
Palmetto Railways
Port Terminal Railroad Association
Terminal Railroad Association of St. Louis - 1
Texas City Terminal Railway Company
Union Pacific Railroad Company
Wichita Terminal Association
Winston-Salem Southbound Railway Company
Wisconsin Central Ltd. d.b.a. C.N.

* * * * * *

Notes:

1 - Health & Welfare only
2 - Wages and Health & Welfare only

ATTACHMENT A

CARRIERS REPRESENTED BY NATIONAL CARRIERS' CONFERENCE COMMITTEE WITH RESPECT TO YARDMASTERS DEPARTMENT - INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS, TRANSPORTATION DIVISION

Alton & Southern Railway Company - 3
BNSF Railway Company
Consolidated Rail Corporation
Consolidated Rail Corporation (Mechanical Foremen) - 1
CSX Transportation, Inc. – 2
    Seaboard Coast Line Railroad Company (Former)
    Baltimore & Ohio Railroad Company (Former)
    Chesapeake & Ohio, Louisville & Nashville, Clinchfield, Nashville, Chattanooga St. Louis, and Monon Railroad Companies
    Conrail Northern Lines
Grand Trunk Western Railroad Company d.b.a. C.N.
Illinois Central Railroad Company d.b.a. C.N.
Indiana Harbor Belt Railroad Company
The Kansas City Southern Railway Company
    Kansas City Southern Railway
    Joint Agency
Longview Switching Company - 3
New Orleans Public Belt Railroad Corporation - 3
Norfolk & Portsmouth Belt Line Railroad Company
Norfolk Southern Railway Company
    The Alabama Great Southern Railroad Company
    Central of Georgia Railroad Company
    The Cincinnati, New Orleans & Texas Pacific Railway Co.
    Georgia Southern and Florida Railway Company
    Tennessee, Alabama and Georgia Railway Company
    Tennessee Railway Company
Northeast Illinois Regional Commuter Railroad Corporation (METRA) – 2
Portland Terminal Railroad Company
Port Terminal Railroad Association
Terminal Railroad Association of St. Louis
Texas City Terminal Railway Company
Wisconsin Central Ltd. d.b.a. C.N.
Wisconsin Central Ltd. as successor to Elgin, Joliet and Eastern Railway d.b.a. C.N.
Wisconsin Central Ltd. as successor to Duluth, Missabe & Iron Range Railway d.b.a. C.N.

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ATTACHMENT A
SMART-TD (Y)
Page 2

Notes:

1	-	Wages & Rules and Health & Welfare only
2	-	Health & Welfare and Supplemental Sickness only
3	-	Wages, Health & Welfare and Supplemental Sickness only

The American railroad industry has survived for more than a century because of its ability to adapt and innovate in the face of unrelenting challenges. The industry has persisted through economic downturns, wars, fierce competition, and periods of crushing regulation by investing in and implementing new technologies, operating procedures, and business lines. Workplace changes resulting from these advances have not always been embraced at the bargaining table, but those changes have ultimately benefitted railroads, our people, and the industries and communities we serve. We have been able to provide, even in the face of these systemic changes, amongst the very best pay and benefits of any jobs in our economy. And the industry has done this while building and operating a vibrant transportation system that is the backbone of our economy and an extremely safe and environmentally-friendly means of shipping freight.

We move forward at the bargaining table today with previously unfathomable technologies now proven and scalable in ways that can make our system better and safer. Drones, ultrasound, smart sensors, software advancements, big data – these technologies and others, led by the implementation of Positive Train Control ("PTC"), are the modern-day fuel of America's freight rail network. Together with our strong cultures, these technologies are delivering the safest era ever for U.S. railroads. To secure a future that is even safer, the railroad industry believes we must embrace these new technologies and work together to implement them.

Many current economic forecasts call for long-term increases in freight demand, and the opportunity exists to win a greater share of the growing global marketplace for freight. Yet railroads must overcome unrelenting pressure from customers and powerful economic forces to price our services to the market – not to our costs – to retain our current traffic levels and capture new business. Significant challenges to our success include the decline of coal, advancements in trucking, the increasing long-term exposure of our manufacturing and agriculture sectors to global competition, the continued shift towards a services-oriented economy, changes in customer supply chain strategies that require faster and more reliable scheduled service, and renewed threats of increased regulation. Entrenching ourselves in outdated approaches and failing to fully utilize new technologies will diminish our ability to resist these pressures and forces.

This industry has typically lagged behind the rest of the industrial world in adapting workplace practices to new technologies. This approach has only delayed and limited the available options to respond when changes must occur. To meet our challenges head on, we must modernize all aspects of our business, including the terms and conditions of employment. In particular, certain work rules – across all crafts – have not been updated at the national bargaining table for decades. These anachronistic provisions fail to account for modern technology and impede rather than support the timely delivery of freight. Some of these rules also degrade rather than enhance employee quality of life. Reform can and should result in safer workplaces, better and more predictable schedules, greater access to technology, and a wider range of jobs with less travel. Securing a future with leading pay, benefits and healthcare can and will remain part of this employment model if we succeed in meeting these challenges.

Perhaps the most glaring example of our need for modernization concerns the size and makeup of train crews. In order to take full advantage of new investments in modern technology, reduce human error and better align operational costs with other industries, railroads propose to redeploy conductors from the cab of the locomotive to ground-based positions on territories where PTC or equivalent technologies are enabled. Redeploying employees to ground-based positions in these territories will safely and more efficiently meet the industry's operational and service requirements while providing those employees with higher quality-of-life jobs that allow more employees to spend their nights at home after shifts rather than at hotels.[1]

We also need to continue the process of modernizing the health and welfare benefit plans that cover our people and retirees. The plans continue to have an outdated design, including the lack of any tiered employee monthly contributions for spouses and dependents, as well as the lack of a mechanism for annual adjustments to employee cost-sharing to keep pace with increasing health care costs. As a consequence, the plans remain extraordinarily rich when compared to employer-sponsored health benefits typically offered to the American workforce. The richness of the plans fosters an environment within which covered employees and their dependents are not sufficiently engaged in managing their healthcare choices. This lack of engagement leads to poor health decisions and overutilization of health services. As a result, we are not producing good health outcomes and behaviors while still facing health care expenditures that are well outside the mainstream.

Modernizing our agreements is critical to the railroad industry's long-term ability to compete and provide job security. We cannot ignore external competitive pressures and carry on as if past financial performance is simply guaranteed in the future. The security and prosperity of the entire railroad community depends on our continued ability to innovate, adapt, and manage our labor costs in a responsible, measured manner. It is in our long-term interest – labor and management alike – to continue to work together toward a future of stable employment, leading pay and benefits, and safe, efficient service.

[1] The railroads maintain that this proposal is subject to bargaining on a multi-carrier basis. However, without prejudice to that position, the railroads do not insist on multi-carrier handling of this proposal, and instead are, by this Notice, inviting SMART-TD to voluntarily address crew consist on multi-carrier basis, without prejudice to any position that the union may wish to take in the future regarding this issue. This proposal is also without prejudice to any similar or identical proposal that any participating railroad may raise in individual or local bargaining.

The railroads' bargaining proposals – which are based on the foregoing principles – include the following:

1. Wages and Compensation

Adjust wages and/or other compensation to achieve a fair and competitive labor cost structure that reflects the economic conditions of the railroads and (1) accounts for the history of prior wage increases that have resulted in compensation that is significantly above average for comparable positions, and (2) better corresponds to pay levels of positions of comparable skills in other industries. Align compensation elements with work actually performed, and modify any existing incentive compensation arrangements, where applicable, to better align pay with the needs and goals of railroad operations. Any wage and compensation adjustments shall be effective only upon the date of signing of a new agreement. In other words, such adjustments will not be back-dated or be calculated retroactively from the amendable date of current agreements.

Moreover, in the event that SMART-TD declines to negotiate over crew consist on a multi-carrier basis or the parties are unable to agree on changes in crew consist, the railroads propose an adjustment to compensation, apart from and/or in lieu of the adjustments proposed above, to reduce pay in any circumstance in which a train is required by any labor agreement to operate with more personnel than would be assigned by the railroad based on operational needs alone.

2. Health and Welfare

The railroads seek to modernize the health care plans' design and administrative practices and make available resources to enable covered employees and their dependents to better engage in their own healthcare decisions. Specifically:

- Increase member cost-sharing to establish an actuarial value that reflects the mainstream health plan design.

- Introduce a tiered employee monthly contribution structure and add surcharges for working spouse enrollment and tobacco use.
- Implement a mechanism to maintain the agreed-upon actuarial value and total cost-share split in the future (i.e., annual "indexing" or elimination of fixed co-pays).
- Adopt all pharmacy management rules and programs to ensure appropriate medications are being prescribed.
- Reconfigure the medical vendor network to utilize networks with favorable provider discounts and overall cost of care.
- Offer digital health programs to improve member engagement in health care decisions, increase use of value-add programs, and to help members manage chronic health conditions.
- Establish additional direct relationships with centers of excellence to ensure members have the best care available for serious and complex conditions.
- Amend ERMA to mirror the active plan design for pharmacy benefits and to require monthly retiree contributions.
- Require additional payments from employees to account for any delayed implementation of plan changes agreed to by other unions.

3. Work Rules

The prior two national bargaining rounds have concluded without any major changes to work rules, and some work rules have not been updated at the national bargaining table for decades. In this round, the railroads are seeking changes to rules that restrict flexibility, impede efficiency, degrade the industry's ability to compete, and no longer reflect mainstream standards.

While the railroads' proposed work rule reforms cover all crafts, the impact of those proposals may vary by craft and include the following:

- Updating provisions that restrict management discretion over the assignment of work or that continue to allow for antiquated methods of distribution of work assignments or that are inconsistent with the need to support 24/7 operations. Additional discretion in these areas would add flexibility over which crafts (as well as employees with certain qualifications within a craft) may perform work in various circumstances, when such work may be assigned and performed, the duration of time the work may be performed, and the circumstances under which work rules may be relaxed to meet customer demands. Likewise, modernizing assignment procedures – including through use of electronic bidding – will provide benefits for both carriers and employees.
- Simplifying carrier agreements, consolidating multiple legacy railroad contracts within the same workgroup, reducing methods of payment calculation, and accelerating when certain operational changes may be implemented. By simplifying these provisions, railroads will bring these aspects of existing agreements into greater alignment with mainstream business practices and eliminate or revise outdated, unnecessary, and/or overly complex agreement language, pay systems, and notice rules.
- Eliminating or revising other work rules that inhibit efficient operations and modernizing outdated agreement terms to correspond to current standards in American transportation industries, including relaxing arbitrary geographical limits on work performed by train crews, allowing for greater flexibility to timely deploy well-trained teams to critical projects, and sunsetting excessive forms and lengths of furlough protections not enjoyed elsewhere in U.S. industries.

4. General Contract Reform

In addition to the foregoing proposals, make all necessary changes in contracts, rules and practices to improve operational efficiency and productivity, simplify and streamline existing contracts and contract language, facilitate the gradual elimination of redundant or unnecessary positions, reduce time paid but not worked, enhance safety, enable expanded use of technology, and otherwise reflect the competitive and financial needs of the industry as well as the mutual interest of the carriers and their employees in responsible, stable, enduring, and fair rules, rates of pay, and working conditions.

5. Duration and Moratoriums

Provide for agreement of sufficient duration to facilitate labor stability and predictability. In addition, in the event that subsequent legislative or regulatory changes prevent the carriers from obtaining – or deprive the carriers of the benefits of – any newly negotiated rights, the parties shall, notwithstanding any existing moratoriums, reach agreement – through negotiation or, if necessary, binding arbitration – on alternative contract terms providing the same relative economic value to each party.

Adopt moratorium similar to that contained in the last national settlement. Replace any extant moratorium in local agreements with single, consolidated moratorium.

* * * *

The carriers reserve the right to amend or modify these proposals and/or to make additional proposals to the extent permitted by law.

SMART TRANSPORTATION DIVISION ATTACHMENT "A"

November 20, 2019

Except as otherwise provided herein, effective January 1, 2020, the existing rules, agreements, interpretations or practices, however established, shall be amended to provide as follows:

ITEM 1 – SERVICE SCALE

(a) Completely and permanently eliminate service scale/entry rates where such service scale exists.

(b) Permanently restore dual arbitrary payments which were eliminated by the October 31, 1985, National Agreement.

ITEM 2 – WAGES

(a) Provide a series of General Wage Increases (GWIs) to become effective January 1, 2020, and every six (6) months thereafter, which shall be applied to all components, including but not limited to arbitraries, differentials, miscellaneous rates, special allowances, daily, weekly, and monthly guarantees based upon hourly or daily rates of pay, including those expressed in terms of miles, and overmiles.

(b) Require carriers to pay retroactive pay, if necessary, to January 1, 2020. In addition, all retroactive wage adjustments will be made by separate check to the employee within thirty (30) days of ratification of the agreement.

(c) An itemized statement detailing each employee's retroactive wage adjustment calculations will be provided to affected employees at the time of payment.

(d) Provide for Cost-of Living Adjustments, (COLAs) in addition to GWIs, every six (6) months.

(e) Signing bonus of five thousand dollars ($5,000.00) to be paid within thirty (30) days of ratification of the agreement.

(f) Annual year-end bonus/profit sharing/stock options, to be paid by December 1 of each calendar year.

ITEM 3 – EMPLOYEE CERTIFICATION AND MAKE-WHOLE PAYMENT

(a) Increase the daily compensation for service requiring certification to twenty dollars, ($20.00) subject to all future GWIs and/or COLAs.

(b) Provide payment for all time lost and expenses incurred in connection with any required periodic qualification or re-certification exams including, but not limited to, required regulatory documents (passports, enhanced drivers' license, TWIC card, etc.), written examinations, re-qualification rides, physicals, sleep studies, hearing tests, vision acuity tests, and any other examinations required by the carrier or statute.

(c) Certification pay to be paid to all employees holding such certification, regardless of the craft in which service is performed.

(d) Hazard pay equal to 10% of total earnings per tour of duty for operating a Key Train or High Threat Urban Area train.

ITEM 4 – TECHNOLOGY

(a) Technology compensation of twenty-five dollars ($25.00) per day for required utilization of all in-cab and handheld reporting devices, subject to all future GWIs and/or COLAs.

ITEM 5 – SHIFT AND WEEKEND DIFFERENTIAL

(a) Provide additional compensation for employees performing service or deadheading in all classes of road, yard, and passenger service on nights, weekends, or holidays.

(b) Such pay differentials shall be subject to all future GWIs and COLAs.

ITEM 6 – RSIA

(a) Employees will be made-whole for pay purposes up to 276 hours and/or any limbo time when held in due to RSIA.

(b) Employees observing federally mandated rest periods in accordance with monthly service or consecutive day limitations will not be considered unavailable for any reason.

ITEM 7 – FATIGUE ABATEMENT

(a) Establish additional rest opportunities and the ability to mark off for family needs, visits to a primary care physician, and emergencies related to quality of life, without penalty.

(b) Require the carriers to provide accurate train line-ups for more predictability of on-duty time.

(c) Require the carriers to provide a ten (10) hour advance call time to all employees working in unassigned service.

ITEM 8 – TRAINING

(a) Amend the pertinent provisions of the 1972 Manning Agreement to provide for the same basis of pay applicable to any craft represented by the SMART-TD on the assignment on which they are training, unless otherwise provided for at a higher rate of pay.

(b) Any required qualification, re-qualification, and/or familiarization trips will be compensated as if the employee was performing service in any craft represented by the SMART-TD on the assignment, unless otherwise provided for at a higher rate of pay.

(c) Each employee assigned to a crew utilized by the carrier to provide training, instruction, familiarization trips, or similar mentoring in connection with their regular or extra board assignment shall be provided payment in the amount of four (4) hours at the applicable rate, in addition to all earnings of the assignment.

(d) Establish a rule to require all training to be performed by a conductor mentor or peer trainer designated by the Organization, where such rule does not exist.

(e) Establish a voluntary bid system to allow employees to request selection for engineer training.

(f) Eliminate the pertinent provisions of Article 13, Section 3, Paragraph 1, of the 1985 National Agreement, which contemplate fitness and other qualifications being equal.

ITEM 9 – OVERTIME

(a) Provide compensation at the overtime rate after eight (8) hours on-duty for assignments with a mileage component, regardless of miles run and without reduction in pay for all miles run.

(b) Provide overtime to all employees after twelve (12) hours on-duty for freight service runs exceeding 195 miles.

(c) Provide overtime to all employees in regular assigned service exceeding five (5) days per week, where rules do not currently provide for such overtime payment.

(d) Provide overtime to all employees for service performed on assigned rest days, where rules do not currently provide for such overtime payment.

(e) Include all service in operating crafts for overtime qualifying purposes.

ITEM 10 – MEAL PERIODS, MEAL ALLOWANCES, AND HELD-AWAY PAY

(a) Allow a rate equal to the IRS rate for all away from home meals per calendar day (currently $66.00).

(b) Employees shall continue to be compensated until they receive a room at the away-from-home terminal lodging facility.

(c) Held-away pay will begin at the expiration of required legal rest, and will be paid continuously until the return train departs the away-from-home terminal, or if deadheaded, until the conveyance by which deadheaded departs the away-from-home terminal.

(d) Increase yard meal period from twenty (20) minutes to one (1) hour with no reduction in pay. Such meal period must begin after four-and-one-half (4 ½) hours on-duty, and be completed before six (6) hours on-duty. If such meal period is not granted as outlined herein, the employee will be allowed an additional day's pay at the rate of the assignment.

(e) Establish a standard for eating facilities for yard and other assigned crews.

(f) Increase ID meal allowance on freight runs to twelve dollars and fifty cents, ($12.50) subject to all future GWIs and COLAs.

ITEM 11 – REMOTE CONTROL COMPENSATION

(a) Increase RCO pay from forty-six (46) minutes to three (3) hours.

(b) Provide eight (8) hours of pay for conversion of remote control to conventional operation.

ITEM 12 – 401K PLAN

(a) Establish an employer-contribution 401k Plan, with matching employee contributions. This 401k Plan shall be in addition to any other plan currently available.

(b) The fees associated with this plan will be the responsibility of the carriers.

ITEM 13 – VACATIONS

(a) Reduce the number of years necessary to qualify for a vacation and increase the total number of vacation weeks, as follows:

- One (1) year of service provides two (2) weeks.
- Five (5) years of service provides three (3) weeks.
- Ten (10) years of service provides four (4) weeks.
- Fifteen (15) years of service provides five (5) weeks.
- Twenty (20) years of service provides six (6) weeks.
- Twenty-five (25) years of service provides seven (7) weeks.

(b) Allow up to three (3) weeks of floating vacation per year.

(c) Allow all vacation weeks to be taken in single day increments.

(d) Provide guaranteed availability of pre-arranged compensated time off.

(e) Permit employees to split all week-long vacation periods to which he/she is entitled.

(f) Increase the number of days credited towards vacation qualifications for days on an extra list and performing no service.

(g) Increase the number of days absent or unable to perform service due to an on-duty injury.

(h) Allow credit towards vacation qualifications for days absent from and unable to perform service due to an off-duty illness or injury.

(i) Allow credit towards vacation qualifications for each day required to observe federally mandated rest periods in accordance with monthly service or consecutive day limitations.

(j) Employees who do not accrue the required days for full vacation entitlement shall have vacation entitlement pro-rated, based on actual qualifying days accrued in the previous calendar year.

(k) Recognize that compensated service days of employees transferring to train and engine service crafts from non-train and engine service crafts will be used in determining previous year qualifying days and accumulated qualifying days.

(l) Employees absent during the vacation bid period due to an approved leave of absence, disciplinary reinstatement, or military leave, will be allowed to, upon return to service, bid any vacation earned in accordance with the National Vacation Agreement.

ITEM 14 – HOLIDAYS AND PERSONAL LEAVE DAYS

(a) Increase the number of paid holidays to include Martin Luther King's birthday, Mother's Day, Father's Day, Halloween, and Veteran's Day.

(b) Pay time and one-half to employees who are not currently covered under the National Holiday Rule for working on a holiday.

(c) Holiday pay for all assignments not currently covered under the National Agreement.

(d) Change the allotment of personal leave days to match the number of paid holidays. The employee may choose to either receive paid compensation for the holiday or waive holiday pay in lieu of an accrued personal day.

(e) Allow unused personal leave days to be carried over to the subsequent calendar year without reduction in rate.

ITEM 15 – SICK LEAVE

(a) Establish paid sick leave for all train and engine service employees, without censure or discipline.

ITEM 16 – TRAUMA LEAVE AND MATERNITY LEAVE

(a) Provide for compensated trauma leave equal to 60% of employee's salary, and counseling, if requested.

(b) Employees will have the option to take up to three (3) out of six (6) weeks of paid maternity leave. This would apply to both parents.

ITEM 17 – OFF-TRACK VEHCILE AGREEMENT

(a) Amend the off-track vehicle agreement to provide for full reimbursement of lost wages.

(b) Provide employees adequate uninsured and underinsured motorist/driver protection.

ITEM 18 – BEREAVEMENT LEAVE

(a) Provide improvements in compensation and number of allowable days off for bereavement leave, to be taken within thirty (30) days from the date of death.

(b) Expand the persons for whom such leave and compensation will be allowed to include domestic partners, step-parents, step-siblings, step-children, grandchildren, grandparents, and spouse's grandparents.

ITEM 19 – LOCOMOTIVE STANDARDS

(a) Establish standards for the collection and use of any information or data captured by a recording device on a locomotive.

(b) Provide uniform locomotive cab standards including, but not limited to: climate control, cleanliness, seating and cab equipment, and other such appropriate facilities to facilitate safe and efficient operations.

(c) Require carriers to provide air ride or other suitable shock-absorbing seats on all locomotives.

(d) Require carriers to provide functional air conditioning on all lead locomotives.

(e) Require carriers to provide a working microwave on locomotives used in through freight service.

(f) Require carriers to provide a working hot plate on locomotives used in through freight service.

(g) Require carriers to provide a working coffee maker on locomotives used in through freight service.

(h) Require carriers to provide a functioning toilet on all occupied locomotives used in yard or road service.

(i) Establish a National Locomotive Cab Committee.

ITEM 20 – JURY DUTY

(a) Provide that employees will be made-whole for all time lost as a result of being summoned for jury duty.

ITEM 21 – LODGING

(a) Carrier-provided lodging, including meal allowances, for employees forced to a permanent vacancy more than 30 miles from their home terminal.

(b) Establish minimum standards for away-from-home terminal lodging facilities and twenty-four (24) hour dining facilities, and provide suitable transportation to and from dining facilities.

(c) Provide reverse lodging to employees, where applicable.

(d) Provide individual lockers for all employees at away from home terminal/lodging facilities.

ITEM 22 – DEADHEADING

(a) All deadheads to be paid at a basic day or trip rate, whichever is greater in all classes of service.

(b) Eliminate two-tier pre/post 85 pay for deadheads.

(c) Wait time pay on minute-by-minute basis for all time in excess of thirty (30) minutes spent waiting on carrier-provided transportation (paid in addition to regular service).

(d) Provide that train crews will not be deadheaded via locomotives.

ITEM 23 – EMPLOYMENT AND FURLOUGHS

(a) Eliminate Article XII of the 1985 UTU National Agreement in its entirety.

(b) Provide carrier-subsidized vocational training for all furloughed employees.

(c) Establish a rule requiring all railroads signatory to the National Agreement to give first employment consideration to qualified conductors who are furloughed from other signatory railroads. (If an individual is furloughed, he/she would be able to put their name on a list to be given first consideration for employment on other railroads.)

(d) Guarantee a minimum of sixty (60) days of work and/or compensation for employees who are furloughed and called to return to work.

(e) Employees holding train service seniority will be the first source of supply for establishing Yardmaster seniority. Such positions will be filled by the senior represented employee making application solely on a voluntary basis.

ITEM 24 – PERSONAL PROTECTIVE EQUIPMENT

(a) Require carriers to provide all personal protective equipment.

ITEM 25 – NEW HIRE PROCESS

(a) A SMART-TD designated officer will attend and contribute input for all crafts represented by such Organization during the carriers' hiring process.

(b) Require carriers to provide a quarterly report of the total number of assignments/positions by terminal or district.

(c) Require carriers to provide a monthly non-dues paying report to the General Chairperson(s).

Savings Clause – The above Notices, or any of them, or any part of them, shall not apply on any property where they are already in effect, or where more beneficial provisions are already in effect.

SMART TRANSPORTATION DIVISION YARDMASTER ISSUES
(In addition to those listed above)

ITEM 26 – WAGES

(a) Provide a series of General Wage Increases (GWIs) to become effective January 1, 2020, and every six (6) months thereafter, which shall be applied to all components, including but not limited to arbitraries, differentials, miscellaneous rates, special allowances, daily, weekly, and monthly guarantees based upon hourly or daily rates of pay, including those expressed in terms of miles, and overmiles.

(b) Require carriers to pay retroactive pay, if necessary, to January 1, 2020. In addition, all retroactive wage adjustments will be made by separate check to the employee within thirty (30) days of ratification of the agreement.

(c) An itemized statement detailing each employee's retroactive wage adjustment calculations will be provided to affected employees at the time of payment.

(d) Provide for Cost-of Living Adjustments, (COLAs) in addition to GWIs, every six (6) months.

(e) Signing bonus of five thousand dollars ($5,000.00) to be paid within thirty (30) days of ratification of the agreement.

(f) Annual year-end bonus/profit sharing/stock options, to be paid by December 1 of each calendar year.

ITEM 27 – YARDMASTER PROTECTION (SCOPE)

(a) The term "Yardmaster" as used in this agreement shall be construed to mean Yardmasters of all grades, including relief and extra, except footboard Yardmasters.

(b) Yardmasters will have the exclusive right to instruct and supervise all train and engine service crews, regardless of carrier nomenclature or class of service, while they occupy other than main line trackage within their respective districts

(c) The duties and responsibilities of Yardmasters shall include: supervision over employees directly engaged in the switching, blocking, classifying and handling of cars, trains and duties directly incidental thereto that are required of the Yardmaster in a territory as designated by the carrier and such other duties as assigned.

(d) Yardmaster work cannot be transferred, consolidated, combined or centralized to any location outside the terminal, regardless of seniority districts, unless a demonstrative decline in volumes of cars in/out and a reduction of crews supervised to one (1) crew regardless of class of service. When Yardmaster work is transferred outside of the location, it will be done in accordance with the provisions of New York Dock. An incumbent on a position transferred and those that may fall out at the bottom will be automatically certified as adversely affected.

(e) Other properly authorized representatives of the Company may, incidental to their other duties, perform duties performed by Yardmasters so long as such performance does not result in the elimination of a Yardmaster's position.

ITEM 28 – EXTRA BOARDS

(a) Establish and maintain a guaranteed extra boards at all terminals where there are regular assigned Yardmasters.

(b) Guaranteed extra board Yardmasters will have two (2) assigned rest days designated by the carrier. Rest days do not need to be consecutive, however, the carrier will make every attempt to do so.

ITEM 29 – YARDMASTER VACATIONS

(a) Reduce the number of years necessary to qualify for a vacation and increase the total number of vacation weeks, as follows:

- One (1) year of service provides two (2) weeks.
- Five (5) years of service provides three (3) weeks.
- Ten (10) years of service provides four (4) weeks.
- Fifteen (15) years of service provides five (5) weeks.
- Twenty (20) years of service provides six (6) weeks.
- Twenty-five (25) years of service provides seven (7) weeks.

(b) Apply 1/52 pay or a basic day (whichever is greater) to fall in line with the other crafts.

(c) Recognize that compensated service days of employees transferring to Yardmaster service from all non-Yardmaster crafts will be used in determining previous year qualifying days and accumulated qualifying days.

(d) Allow all vacation weeks to be taken in single day increments.

(e) Employees who do not accrue the required days for full vacation entitlement shall have vacation entitlement pro-rated, based on actual qualifying days accrued in the previous calendar year.

ITEM 30 – YARDMASTER PERSONAL LEAVE DAYS

(a) Change the allotment of personal leave days to match the number of paid holidays. Yardmasters may choose to either receive paid compensation for the holiday or waive holiday pay in lieu of an accrued personal day.

(b) Allow Yardmasters to carryover any unused personal leave days to the subsequent calendar year.

ITEM 31 – MEAL ALLOWANCE

(a) Provide Yardmasters an automatic arbitrary payment of one (1) hour of straight time, added to their daily wage, in lieu of taking their allotted meal period.

ITEM 32 – DISPLACEMENTS

(a) Regular assigned Yardmasters that are displaced will bump a junior Yardmaster (per Applicable Agreement) where their seniority allows, or be placed on an unassigned extra board, and be allowed to flow back to his/her previous craft (if allowed by agreement) and will be required to protect all vacant Yardmaster positions.

ITEM 33 – YARDMASTER JOB ABOLISHMENTS

(a) Require a time study of at least ten (10) days prior to the abolishment of Yardmaster positions. The General Chairperson or his/her designee, along with a duly authorized company official, will be present during such time study period.

(b) Yardmasters shall be allowed a one-time system transfer if his/her terminal is shut down and there is no Yardmaster work being performed. The affected Yardmaster shall be placed at the bottom of the seniority roster.

ITEM 34 – TRAINING ALLOWANCE

(a) Yardmasters will be compensated four (4) hours straight time pay while training any new Yardmaster, or when providing remedial training for Yardmasters.

(b) Yardmasters will be compensated at their daily rate when familiarizing at a different location with a minimum of forty-five (45) starts.

(c) Yardmasters who have not worked at a location for one (1) year will be afforded a minimum of forty-five (45) starts in order to refamiliarize at the new location. Additional compensated training shall be allowed as needed.

ITEM 35 – SICK LEAVE

(a) Amend the Yardmaster Supplemental Sickness Plan to provide benefit payments beginning the first day of sickness.

(b) Amend the Yardmaster Supplemental Sickness Plan to allow yardmasters who are on a military or government pension to be entitled to full Yardmaster sickness benefits when off due to illness or sickness with Trustmark Insurance.

(c) Establish two (2) paid sick leave days per month for all Yardmaster employees, without censure or discipline.

ITEM 36 – LIFE INSURANCE

(a) Increase the benefit under the Yardmasters' supplemental life insurance Policy to fifty thousand dollars ($50,000.00) for active employees, and twenty thousand dollars ($20,000.00) for retirees.

ITEM 37 – SUPERVISION OF REMOTE CONTROL

(a) Yardmasters supervising crews that operate remote controlled equipment will be compensated an additional arbitrary payment of one (1) hour at straight time pay.

ITEM 38 – BEREAVEMENT LEAVE

(a) Provide improvements in compensation and number of allowable days off for bereavement leave.

(b) Expand the persons for whom such leave and compensation will be allowed to include domestic partners, step-parents, step-siblings, step-children, grandchildren, grandparents, and spouse's grandparents.

ITEM 39 – HOLIDAYS

(a) Increase the number of paid holidays to include Martin Luther King's birthday, Mother's Day, Father's Day, Halloween, and Veteran's Day.

(b) Pay time and one-half to employees who are not currently covered under the National Holiday Rule for working on a holiday.

(c) Holiday pay for all assignments not currently covered under the National Agreement.

ITEM 40 – MATERNITY LEAVE

(a) Yardmasters will have the option to take up to three (3) out of six (6) weeks of paid maternity leave. This would apply to both parents.

ITEM 41 – YARDMASTER TURNOVER TIME

(a) Increase turnover time to a guaranteed minimum of thirty (30) minutes.

ITEM 42 – 401K PLAN

(a) Establish an employer-contribution 401k Plan, with matching employee contributions of ten percent (10%). This 401k Plan shall be in addition to any other plan currently available.

(b) The fees associated with this plan will be the responsibility of the carrier.

ITEM 43 – SERVICE SCALE

(a) Eliminate all rate progression when promoted to Yardmaster.

ITEM 44 – UNASSIGNED YARDMASTERS

(a) Unassigned Yardmasters with insufficient seniority to hold a regularly assigned Yardmaster position will be established only after a guaranteed extra board Yardmaster position is established.

ITEM 45 – YARDMASTER PROTECTION

(a) Yardmasters will remain at their respective location should they be forced to control another yard location.

ITEM 46 – SHIFT AND WEEKEND DIFFERENTIAL

(a) Provide weekend differential payment for Yardmasters working 1st shift.

(b) Provide differential payment for all Yardmasters working 2nd shift.

(c) Provide differential payment for all Yardmasters working 3rd shift.

(d) Such pay differentials shall be subject to all future GWIs and/or COLAs.

ITEM 47 – JURY DUTY

(a) Provide that Yardmasters will be made-whole for all time lost as a result of being called for jury duty.

ITEM 48 – TECHNOLOGY

(a) Provide technology payment for any current and future responsibilities that involve the use of handheld reporting devices or camera monitoring devices to perform Yardmaster duties at remote locations.

ITEM 49 – NEW HIRE PROCESS

(a) An officer designated by the Organization will attend and contribute input for all crafts represented by such Organization during the carriers' hiring process.

Savings Clause – The above Notices, or any of them, or any part of them, shall not apply on any property where they are already in effect, or where more beneficial provisions are already in effect.

2020 Bargaining Round
CBC Work Rule Proposals
October 1, 2020

Work Rule Proposals

Proposals have been developed with the following goals:

- Improve safety
- Modernize work rules
- Increase employee utilization
- Enhance customer service
- Increase network reliability and resilience

Operating Crafts Proposals

- ❑ Improved Approach to Job Assignments:
  - ❑ Electronic Bid
  - ❑ Pool Regulation
  - ❑ Self-Supporting Pools
- ❑ Expanded Road/Yard Service Zone
- ❑ Service Enhancements:
  - ❑ Interdivisional (ID) Service
  - ❑ Enhanced Customer Service
- ❑ Convert Penalties/Arbitraries

Improved Approach to Job Assignments (SMART TD and BLET) (1 of 3)

General Concept:

A multifaceted approach that brings structure and efficiency to the assignments of T&E employees, promotes job stability and predictability, and addresses staffing and service needs.

Proposal:

1. A carrier may propose implementation of a rule(s), in accordance with the terms and procedures set forth herein, providing for:
   a. Electronic Bid: establishment of a structured process under which employees are assigned jobs on a predetermined cycle, based on their seniority and job preferences.

   b. Pool regulation: revision of existing pool regulation rules to provide for regulation based on the number of starts in a defined period of time, or the predicted future number of starts over a given period, rather than by mileage or other pay elements. Pools may be regulated as frequently as the pre-determined period. Remove any rules/formulae that prescribe the minimum number of extra board positions relative to the jobs/assignments such extra boards protect.

   c. Self-supporting pools: conversion of general freight pools to a system under which pool vacancies are protected within that pool, rather than protected by an extra board. Work/rest schedules may be created for these pools.

2. Any proposal made pursuant to Section 1 shall include such terms and conditions as the carrier deems necessary to implement such rule.

Improved Approach to Job Assignments (SMART TD and BLET) – (2 of 3)

3. The carrier shall serve written notice of its proposal on the appropriate organization representative(s). Such proposal shall include a synopsis on the proposed rule(s). An initial conference on the proposal will be held within thirty (30) days after the date of the notice. If the parties fail to resolve the matter within sixty (60) days of the initial conference, the carrier may submit the dispute for resolution by party-paid arbitration at any time thereafter.

4. Arbitration process: The arbitrator shall be selected by the parties, within thirty (30) days after referral, by mutual agreement or through alternative striking from a five-person list supplied by the National Mediation Board pursuant to a request by a party.

   This process will be subject to the following:

   a. A hearing shall be held within thirty (30) days of the arbitrator's selection.

   b. The arbitrator's decision shall be issued within thirty (30) days after conclusion of the hearing, and shall be final and binding upon the parties.

Improved Approach to Job Assignments (SMART TD and BLET) – (3 of 3)

5. Pursuant to this process, a rule(s) will be implemented either by agreement or by award and the arbitrator's jurisdiction. Accordingly, the arbitrator's jurisdiction shall be limited solely to a determination of the terms necessary to implement such rule(s) and satisfy the following requirements:

   a. Electronic bid shall provide for assignment of employees to positions on a predetermined basis through an automated or semi-automated process and remove all placement and displacement time.

   b. Pool regulation shall be made on the basis of the number of starts in a defined period of time, or the predicted future number of starts over a given period; may include an automatic adjustment process to ensure consistency with the requirements and intent of the RSIA, full-time employee availability, and fatigue abatement.

   c. Self-supporting pools shall require that pool vacancies be protected within that pool, rather than by an extra board.

   d. The terms of the arbitrator's determination shall comply with applicable regulatory requirements.

   e. The arbitrator will consider existing agreements that cover electronic bid, pool regulation and self-supporting pools on the applicable carrier to extend to new agreements.

   f. Any previous rules bargained for locally between the parties will be retained, unless specifically indicated otherwise, superseded by, or in conflict with the carrier's proposal.

Benefits to Improved Approach to Job Assignments – Electronic Bid

Employees	Carriers
❑ No longer subject to being displaced from a position ❑ Will remain on their assigned job for the duration of the pre-determined job period ❑ Ability to move based on their seniority each job period ❑ Improved work/life balance	❑ Proactively plan for the network ❑ Elimination of bid and bump rules associated with placement time ❑ Provides for a more scheduled, predictable railroad through the elimination of numerous scheduling variables ❑ Ability to add and/or delete jobs on a pre-determined period without starting a displacement chain ❑ Reduced reliance on Extra Boards

How tomorrow moves

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Benefits to Improved Approach to Job Assignments – Pool Regulation

Employees

- Start regulations establish start targets based on length of run and most recent pool starts, resulting in a more accurate assessment of the pool's activities
- Promotes more effective staffing based upon the amount of work employees are performing
- Minimizes job disruptions to others outside the pool and promotes a better work/life balance for those within the pool
- Proactive regulation provides for appropriate pool staffing, maximizing earnings for employees

Carriers

- Replace outdated mileage regulation designed prior to RSIA limitation
- More frequent opportunities to review activity in concert with pre-determined period and to adjust pools based upon current conditions and needs
- Ability to more effectively balance employees' desire to maintain earnings against the risk of exhausting a pool
- Proactive pool regulation through technology provides the ability to better predict future workforce needs

How tomorrow moves

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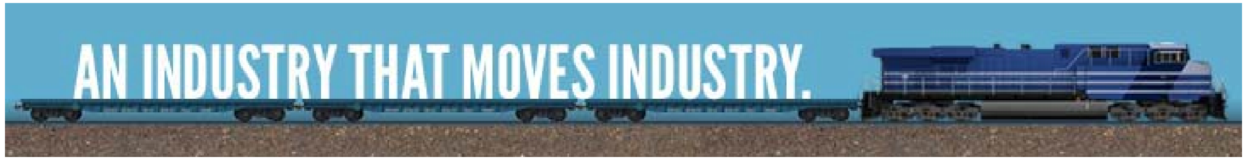
Benefits to Improved Approach to Job Assignments – Self-Supporting Freight Pools

Employees	Carriers
❑ Maximizes work opportunities/earnings for pool employee	❑ Pool is less reliant on extra boards and/or running rosters to fill positions unnecessarily
❑ Eliminates "waiting turn" time for employees after marking up – minimizing lost work opportunities	❑ Eliminates "waiting turn" time for employees after marking up – improving availability
❑ Minimizes job disruption to other employees at the supply point	❑ Avoids delay associated with calling employees outside of the pool to protect the work

Work Rule Proposals

Nothing in these Proposals are intended to restrict any existing rights of any carrier.

Questions/Comments



NCCC COMPREHENSIVE PROPOSAL TO RAIL LABOR UNIONS

July 11, 2022

I. Compensation

1. General Wage Increases totaling 16.0% (uncompounded), as follows:

Date	GWI
7/1/20	2.0%
7/1/21	3.0%
7/1/22	6.0%
7/1/23	3.0%
7/1/24	2.0%

2. The retroactive portion of wage increases that precede the effective date of this Agreement shall be applied to employees who have an employment relationship with the carrier on such effective date or who retired or died subsequent to June 30, 2020. The payment will be made as a single lump sum within 60 days of the effective date consistent with historic practices

3. A $1,000 signing bonus will be payable to each eligible member of a craft or class upon successful ratification of a Tentative Agreement by the applicable labor organization. Employees who have an employment relationship as of the effective date of this Agreement will be eligible for the bonus, which will be paid as a single lump sum within 60 days of such effective date

4. SMART-TD only: in the absence of agreement on a final and binding process to achieve changes in train crew size and redeployment of conductors in PTC-enabled territory, compensation will be adjusted to the extent necessary to mitigate the economic impact of trains operating with more personnel than would be assigned by the railroad based on operational needs

II. Health and Welfare[1]

1. Medical/pharmacy/mental health substance abuse benefits

   A. Identify and implement changes to benefit design cost sharing features (deductible, copays, coinsurance, and member out-of-pocket maximum) to achieve:
      i. An actuarial value in 2023 of 88%, and
      ii. Identify and implement further changes annually to maintain an actuarial value of 88% in 2024 and each year thereafter

[1]Note: the carriers' proposals are without prejudice to: (1) their existing rights to present administrative proposals to the JPC/GC; and (2) any position they may assert in any future arbitration proceeding regarding the scope of the deadlock neutral's authority.

B. Update medical Plan monthly employee cost sharing as follows:
   i. Re-establish and maintain 15% employee contribution cost sharing using the historic medical, dental, vision, and life formula (without caps)
   ii. Introduce two-tier member contribution structure: (a) employee + any dependents other than spouse; and (b) employee + spouse + any dependents other than spouse

C. Introduce medical benefit site of care design differentiations and prior authorization programs to encourage the use of free-standing facility or office settings (and discourage the use of outpatient hospital care) for certain surgeries, diagnostic tests, pathology, and dialysis

D. See *Attachment A* for changes to implement items 1.A.-C. in 2023

2. Introduce additional pharmacy rules and programs through the pharmacy vendor, including:

   A. Additional available Advanced Utilization Management ("AUM"):
      i. Step Therapy
      ii. Prior Authorization
      iii. Drug Quantity Management

   B. Advance Opioid Management ("AOM")

   C. Copay Assistance

   On an ongoing basis, the Plans will continue to revise existing rules and introduce new pharmacy rules and programs as may be recommended by the pharmacy vendor.

3. Require the Plans to competitively re-bid and select vendors upon request of either Joint Plan Committee or Governing Plan Committee Co-Chair, provided that a re-bid may not be required for any particular vendor service more than once in any standard contract period (e.g., three or five years depending on the vendor). Any disputes regarding vendor selection will be resolved by the applicable Plan's neutral. SPDs will be modified as necessary to reflect the foregoing, if and to the extent necessary.

4. Dental Benefits

   A. Increase the annual maximum dental benefit per person from $1,500 to $2,000.
   B. Increase the lifetime maximum orthodontia benefit from $1,000 to $2,000.

5. Vision Benefits

   A. Increase frame allowance from $115 to $150.
   B. Increase contact lens allowance from $105 to $150.

6. Hospice Benefits

   A. Increase maximum payment per course of care for room, board, care, and treatment charged by Hospice from $3,000 to $6,000.

B. Increase maximum payment for counseling with a social worker or pastor and counseling for bereavement up to 15 visits for patient's immediate family from $1,000 to $2,000.

7. Hearing Benefits

   A. Increase the annual benefit limit from $600 to $2,000 when using an approved provider, with a maximum of 1 hearing aid per hearing-impaired ear every 3 years.

8. Benefits for Members with Autism

   A. Remove speech therapy age limits
   B. Provide coverage of approved ABA services with no annual dollar limits
   C. Provide autism services with no age restriction
   D. Autism coverage subject to utilization management and overall plan design (e.g., copayments, deductibles, etc.)

III. **<u>Paid Leave and Other Work Rules</u>**

1. Effective as of January 1, 2023, provide an additional paid day off to each employee annually in a manner to be determined by each individual carrier and labor organization. In the absence of agreement, the additional paid day off will be applied as a holiday to be determined by the individual carrier (or, for crafts that receive PL Days in lieu of holidays, an additional PL Day).

2. Operating Craft Automated Bid Scheduling: See *Attachment B*

3. Operating Craft Scheduling Rules: See *Attachment C*

   A. Self-supporting pools
   B. Pool and extra board regulation

IV. <u>Term / Moratorium</u>

1. The national agreement will settle the disputes growing out of the notices served upon the organizations by the NCCC-represented carriers on or subsequent to November 1, 2019 (including any notices outstanding as of that date), and the notices served by the organizations upon such carriers on or subsequent to November 1, 2019 (including any notices outstanding as of that date); *provided*, that this provision will not apply to any separate local notices served by individual carriers on SMART-TD relating to train crew size and redeployment of conductors.

2. New notices can be served 11/1/24, effective 1/1/25.

Attachment A – H&W Plan Design Features & Contributions

	Current			NCCC Proposal – 2023*		
	MMCP In-Network	MMCP OON	CHCB	MMCP In-Network	MMCP OON	CHCB
Medical						
Individual Deductible	$350	$700	$350	$500	$1,000	$500
Family Deductible	$700	$1,400	$700	$1,000	$2,000	$1,000
Coinsurance	10%	30%	20%	20%	40%	30%
Individual OOP Maximum	$2,000	$4,000	$3,000	$3,500	$7,000	$4,500
Family OOP Maximum	$4,000	$8,000	$6,000	$7,000	$14,000	$9,000
Convenient Clinic Copay	$10	NA	NA	$10	NA	NA
PCP Copay	$25	NA	NA	$30	NA	NA
Specialist Copay	$40	NA	NA	$50	NA	NA
Urgent Care Copay	$25	NA	NA	$30	NA	NA
Emergency Room Copay	$100	NA	NA	$200	NA	NA
Certain Outpatient Procedures	NA	NA	NA		†	
Pharmacy						
Retail [1]		$10/$30/$60			$10/$45/$90/$135	
Mail Order [1]		$10/$60/$120			$10/$90/$180/$270	

† Outpatient surgery, radiology, and pathology services will be changed as follows:
A - Prior Authorization will apply (administered by the medical vendors)
B - Copays in addition to applicable deductible and coinsurance amounts will apply if member elects to have procedure performed in outpatient hospital setting rather than a free-standing facility or office setting as follows: $300 surgery copay, $200 high-tech radiology copay, $25 pathology copay *Note that this additional copay provision will not apply to inpatient or emergency room procedures and will not apply if member does not have reasonable access to a free-standing facility or office setting (exception process will be available)*

[1] Generic/Brand Formulary/Brand Non-Formulary copays in current design, Generic/Brand Formulary/Brand Non-Formulary/Specialty (new tier) copays in new designs

Annual indexing beyond 2023 achieved by increasing MMCP In-Network Individual Deductible and Out-of-Pocket Maximum by $50 and $500 respectively (and also maintaining relationships with other deductibles and OOPs)

* The NCCC is open to considering different plan design values (deductibles, coinsurance, copays, etc.) that achieve the same 88% AV target as set out in this Attachment A

Member Monthly Contributions (Estimated)

	Estimated Member Monthly Contribution Under Carrier Proposal	
	EE Only or EE+CH (No Spouse Tier)	EE+Spouse or EE+CH+Spouse (WITH Spouse Tier)
2023	$228.89	$321

Annual Indexing achieved by applying the 15% formula each year (automatic indexing).

- Monthly contribution for Employee Only or Employee+Child(ren) tier will remain at $228.89.
- Monthly contribution for Employee+Spouse or Employee+Child(ren)+Spouse will get the full increase in the composite contribution.

Attachment B – Automated Bid Scheduling (Operating Crafts)

A. General

i. The carriers propose that it is necessary to establish a new approach to job assignments that brings structure, stability, predictability, and efficiency for all employees and the carriers covered by this Agreement.

ii. Previous agreements are amended to permit carriers to provide employees direct and immediate placement to a job through an automated bid system as provided herein. Said amendments will become effective: (a) on the date agreed to by the parties; or (b) absent agreement, 30 days following the date that any carrier-specific implementation issues have been resolved by final and binding arbitration, as provided below.

B. Automated Bid Scheduling (ABS)

iii. Automated Bid Scheduling (ABS) will serve as the primary method to assign employees on a regular basis, based on seniority, qualifications and job preferences.

iv. Carriers will maintain a system containing all employees' assignments, including pools and 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.

v. Employees will be responsible for accessing the system to determine if their assignment has changed.

C. Submitting Preferences

i. All employees will be required to electronically file their individual preferences for their assignment(s) on their Automated Bid Application and will specify a sufficient number of preferences to ensure a selection will be granted.

ii. Employees may make changes or update their individual preferences on their Automated Bid Application.

D. Job Assignments

i. Assignments awarded will be posted electronically for employees. All employee assignments will be assigned based upon the individual preferences employees submitted on their Automated Bid Applications, qualifications and seniority permitting. It is the employee's responsibility to be aware of the new assignment (if applicable) and be rested and available to report when required.

ii. Employees changing assignments will protect their assignment until the designated date and time. Employees who are at their home terminal (and not working) will be placed on their new assignment at the designated date and time. Employees on-duty or not at their home terminal at the start of a new assignment will remain on their previous assignment until returning to their home terminal.

iii. Employees newly assigned to an extra board or 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.

E. Vacation

i. Weekly vacations will commence and end at a designated date and time. Employees scheduled to be off for weekly vacation will not have their Automated Bid processed and will not be assigned to a new assignment. Employees returning from weekly vacation will have their Automated Bid Application processed by the system.

ii. Weekly/block vacation will begin at 12:01 a.m. and will end at 11:59 p.m., unless otherwise authorized.

F. Carrier-Specific Implementation and Other Issues

i. Each carrier may serve a notice of its intent to implement the Automated Bid Scheduling Agreement and, in doing so, may identify any carrier-specific implementation matters that it believes must be addressed in connection with such implementation. The organization may respond with its own list of carrier-specific implementation issues that it believes must likewise be addressed.

ii. The parties shall meet and confer within 30 days following the carrier's notice to discuss the carrier proposals and any related proposals made by the organization. If the parties fail to resolve all issues within 60 days of the first meeting, then either party may submit the matter to final and binding, party-paid arbitration at any time thereafter.

iii. An arbitrator shall be selected within 10 days of the request for arbitration and a hearing shall be held within 30 days thereafter. The arbitrator will give consideration to pre-existing agreements on the carrier involved that cover the matters set forth in the parties' proposals. The terms of the arbitrator's decision, which shall be issued within 30 days following the hearing and will be final and binding, shall ensure availability of a sufficient number of employees to improve operational efficiency and service reliability and comply with applicable regulatory requirements.

iv. A joint committee between the individual carrier and organizations will be established to address implementation issues and to recommend any further changes to carrier-specific rules.

v. Nothing in this Automated Bid Scheduling Agreement is intended to restrict any existing right of a carrier.

Attachment C – Pools & Extra Boards (Operating Crafts)

The carriers propose to establish a new approach to job assignments that brings more structure, stability, predictability, and quality of life for all employees covered by this Agreement. By modifying current rules and leveraging technology, the carriers believe it is possible to achieve these goals in a mutually beneficial way that improves efficiency and does not increase carrier costs. Accordingly, each carrier may serve notice on the authorized Organization representative(s) to implement some or all of the following:

A. Self-supporting pools

i. Pools will be converted to a system under which pool vacancies are primarily protected within that pool

ii. Pools will operate on a first in/first out basis, unless otherwise agreed to by a carrier and labor organization

B. Pool and extra board regulation

i. Pool service will be regulated based on a target number of starts that takes length of run into consideration

ii. There will be a predetermined time period during which the number of starts is tabulated for use in the carrier's calculation of the requisite number of employees in the pool

iii. There will be a predetermined time period for predicting the future number of pool starts utilizing technology

iv. There will be a process for automatic pool adjustment to ensure consistency with the requirements and intent of the Rail Safety Improvement Act (RSIA), full-time employee availability and fatigue abatement

v. Pools will operate on a first in/first out basis, unless otherwise agreed to by the parties

vi. 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

C. Workforce predictability and flexibility

i. In conjunction with adoption of the carrier proposals 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

D. Carrier-Specific Implementation and Other Issues

i. Each carrier may serve a notice of its intent to implement some or all of the itemabove and, in doing so, may identify any carrier-specific implementation matters that it believes must be addressed in connection with such implementation. The organization may respond with its own list of carrier-specific implementation issues that it believes must likewise be addressed.

ii. The parties shall meet and confer within 30 days following the carrier's notice to discuss the carrier proposals and any related proposals made by the organization. If the parties fail to resolve all issues within 60 days of the first meeting, then either party may submit the matter to final and binding, party-paid arbitration at any time thereafter.

iii. An arbitrator shall be selected within 10 days of the request for arbitration and a hearing shall be held within 30 days thereafter. The arbitrator will give consideration to pre-existing agreements on the carrier involved that cover the matters set forth in the parties' proposals. The arbitrator will only have jurisdiction to issue an award that provides efficiency and savings for the carriers while at the same time achieving one or more of the items in Section C.i.a.-c., above.

iv. The terms of the arbitrator's decision, which shall be issued within 30 days following the hearing and will be final and binding, shall ensure availability of a sufficient number of employees to improve operational efficiency and service reliability and comply with applicable regulatory requirements.

v. A joint committee between the individual carrier and organizations will be established to address implementation issues and to recommend any further changes to carrier-specific rules.

vi. Nothing in this Pool and Extra Board Proposal is intended to restrict any existing right of a carrier.

vii. Agreements reached pursuant to this Paragraph (C) will supersede any previous work/rest related rules and/or agreements and will become effective as agreed by the parties or 30 days following the arbitrator's award, as applicable, unless otherwise agreed to by the parties.

RAIL UNIONS' JOINT PROPOSAL
BEFORE PRESIDENTIAL EMERGENCY BOARD 250

(1) Wage Increases:

Effective Date	GWI
Jan. 1, 2020	6%
Jan. 1, 2021	6%
Jan. 1, 2022	8%
Jan. 1, 2023	4%
Jan. 1, 2024	4%

(2) Health and Welfare:

Maintain the *status quo* with the exception of the following plan design changes:

(a) Hearing Benefits. Increase the annual benefit limit to $2,000.

(b) Autism Spectrum Disorder Benefits. Remove age limits on speech therapy and provide coverage for Applied Behavioral Analysis ("ABA") without age or dollar limits.

Employee monthly cost sharing remains at $228.89.

(3) Paid Leave:

(a) Sick Leave. Provide 15 days of paid sick leave annually where it does not currently exist or is less than 15 days every January 1st. Prorate leave allotment for first year of employment. Employees allowed to carryover any unused sick days with no limits on accrual. This does not replace more generous sick leave agreements currently in place, if any. Employees will not accrue any penalty points under any carriers' attendance policies for taking sick leave and days requested are on demand and cannot be denied.

(b) Holidays. Addition of Veteran's Day, Martin Luther King, Jr. Day and Juneteenth as paid holidays, or paid equivalent thereof for crafts not provided holiday leave. For operating craft road crews, they shall be provided equivalent Annual Leave Days (ALDs)/Personal Leave Days (PLDs) consistent with current treatment of holidays for these employees.

(4) Savings Clause:

All proposals contained herein, or any part of them, shall not apply on any property where they are already in effect, or where more beneficial provisions are already in effect. Any request for changes herein is not an admission, express and/or implied, directly and/or indirectly, that those changes requested are not already contained within the terms and conditions in any existing collective bargaining agreement and/or established practice.

(5) Duration:

January 1, 2020 through December 31, 2024.

INDIVIDUAL CRAFTS' PEB PROPOSALS

BLET & SMART-TD

(1) Attendance Policies: On the effective date of the agreement, all non-negotiated attendance policies will be abolished and BLET and SMART TD General Committees of Adjustment shall have the right to serve notice on their respective rail carrier(s) invoking mandatory negotiations on attendance rules and requirements. General Committees of Adjustment having more generous existing agreements have the right to retain those agreements.

(2) 5&2 work scheduled: On the effective date of the agreement, all General Committees of Adjustment shall have the right to serve notice on their respective rail carrier(s) invoking mandatory negotiations providing for voluntary scheduled days off for all unassigned road service. General Committees of Adjustment having more generous existing agreements have the right to retain those agreements.

(3) Meal Allowance: Adopt BLET CSX Single System Agreement meal allowance schedule as national agreement standard. General Committees of Adjustment having more generous existing agreements have the right to retain those agreements.

BMWED

(1) Amend all Travel Allowances to include weekend and mid-week assembly point changes to be paid at the effective Internal Revenue Service (IRS) standard mileage rate for business travel for all miles traveled by the most direct highway route.

(2) Amend Expenses Away from Home Provisions to be paid at the special transportation industry daily meals and incidental expenses allowance as well as the standard CONUS daily lodging allowance established by the General Services

Administration in effect for the applicable fiscal year when single-occupancy lodging is not provided by the carrier.

(3) These proposals are meant to establish a minimum payment and reimbursement, and are not meant to replace and/or reduce payments and reimbursements that currently exist on any carrier as provided by local rule and/or practice

SMART-TD (Yardmasters)

(1) Scope Rule: Clearly define the duties and responsibilities of Yardmasters to include instruction and supervision over all crews occupying trackage in their respective districts, including data input and handling of all electronic devices used by train crew members. Further, clearly define parameters for transferring, consolidating, combining, or centralizing assignments, and provide New York Dock or similar compensation to all who are adversely affected.

(2) Vacations: Apply the principles of Article V, Section 2(d), of 1996 UTU Arbitration Award No. 559 (vacation benefits eligibility and scheduling) to all SMART-TD Yardmasters; apply a 1/52 or basic day (whichever is greater) principle when calculating vacation pay; recognize days of compensated service in other crafts when determining qualifying days and compensation for vacations, and make other changes necessary to align Yardmaster vacation rules with that of the Operating Crafts.

Shopcrafts - BRC, IAM, IBB, IBEW, NCFO, SMWIA, TWU

(1) Provide a weekend and shift differential of ten percent (10%) over normal rates.

(2) Employees required to work more than three hours beyond their bulletined working hours will be allowed reasonable time off with pay for a meal period. A meal allowance of $25.00 shall be granted to the employee which will be received with his regular pay.

TCU/IAM-Clerical

(1) Utilization of collectively bargained sick leave will not result in discipline being assessed. Collectively bargained sick leave cannot be used against an employee's attendance record. This proposal is without prejudice to the Union's ability to grieve this issue in accordance with the procedures outlined in the existing collective bargaining agreements.

BRS

(1) A rate increase effective January 1, 2020, in the amount of $5.00 per hour, to be applied before any GWI, for maintenance employees and those employees directly responsible for or signatory to FRA-required safety-critical repairs, tests, and inspections.

NCFO

(1) Effective January 1, 2020, increase base wage rate by $1.58 to adjust the pay relationship between NCFO-represented employees and shop mechanics to account for changes in job responsibilities resulting from assignments under the incidental work rule.

ATDA

(1) Supplemental Sickness Benefit Plan: Establish a supplemental sickness plan that mirrors current SMART-TD Yardmaster Plan where such presently not in effect.