EXHIBIT 8

SPECIAL BOARD OF ADJUSTMENT 1208

Case 1

SMART Transportation Division
v
Union Pacific Railroad

with

Neutral Earlene R Baggett-Hayes

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Organization's Rebuttal Submission

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QUESTION AT ISSUE

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

TABLE OF CONTENTS

Index of Exhibits

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Introduction and Summary of Rebuttal Argument

The Organization respectfully submits the following as its Rebuttal to the Carrier's opening submission.[1] This Board is tasked with creating a fair and equitable agreement that implements Articles V-VII of Public Law No. 117-216, consistent with the recommendations of Presidential Emergency Board 250 ("PEB 250"). The Parties before this Board have competing proposals with respect to the topics contained in PEB 250 and subsequently enacted by Congress in Public Law No. 117-216. The Organization's proposals achieve that aim. As explained more fully below, the Carrier contends that the Organization's proposals are unworkable and reflect a financial windfall for its membership, while its proposals reflect a balanced trade. However, as demonstrated herein, it is the Carrier's proposals that are wholly unworkable, and further, represent an attempt to extract major gains over its competitors at the expense of its employees due to what it feels was an unfair outcome before PEB 250. While the Carrier may feel entitled to the enactment of its proposals, such has no basis in reality nor is it in accord with PEB 250's recommendations.

First, the Organization addresses the Carrier's perversion of PEB 250 and a subsequent arbitration with a different carrier and a different union. Indeed, the Carrier attempts to mangle the findings and recommendations of PEB 250, wholly ignoring the rationale put forth by the PEB in the hopes that this Board will grant it relief that is well outside the scope of the PEB's recommendations. Second, SMART TD will describe in detail the substantial issues with the Carrier's proposals and why they should not be adopted by this Board. Generally speaking, the Carrier's proposals

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[1] In accordance with the Arbitration Agreement dated September 16, 2024, the attached exhibits are responsive to evidence submitted by Carrier.

are unworkable as a practical matter, many of which are outside the scope of this Board, and impose substantial punitive measures against employees for the sake of reducing manpower. In turn, this is both to the detriment of servicing customers and will provide employees with less balance and consistency. By contrast, SMART TD's proposals represent a balanced approach to the issues in dispute, and importantly, constitute a workable outcome that reflects the recommendations of PEB 250 imposed by Congress. Specifically, the Organization's proposals permit the Carrier to receive certain efficiencies, but not at the expense of employee wellness and customer service.

For the reasons described more fully below, the Organization respectfully requests that this Board impose the terms recommended by SMART TD.

A. PEB 250 Does Not Support the Carrier's Argument.

Before engaging with the Carrier's proposals on each topic, it is first necessary to clarify misconceptions in the Carrier's arguments regarding PEB 250's purported recommendations with respect to Article V-VII. The Carrier has attempted to frame the issue here in such a manner that fails to reflect the reality of PEB 250's recommendations with respect to the topics before this Board. The Carrier essentially contends that PEB 250 provided SMART TD with generous wage increases and other items in a quid pro quo for the Carrier to obtain its sought-after changes to scheduling, paid time off, pools, extra boards, and assignments. This is not true. PEB 250 in no way suggested any preferred outcome with respect to the topics contained in Articles V-VII. The Carrier's attempts to sway this Board to the contrary have no merit whatsoever and should be rejected.

As support for its proposals, the Carrier states in its submission, pg. 48, that "[PEB250'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." Accordingly, the Carrier asserts that the wage increase of 22% was recommended in partial exchange for "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*. The Carrier then goes even farther afield, explicitly stating that PEB 250 wished to grant the Carrier what it wanted: "'this is not a situation where the Board expected carriers to pay extra for changes to 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." *Id*.

This argument has no merit whatsoever and twists the recommendations of PEB 250 beyond recognition. As an initial matter, while the Carrier notes that the 22% wage increase recommended by PEB 250 was "much more than the carriers had offered," the fact is that it was <u>much less</u> than the 28% SMART TD proposed. Indeed, the recommendation landed right in the middle of the competing proposals. The Carrier's best effort to spin the 22% increase as being PEB-recommended in exchange for the Carrier's proposals on bidding, scheduling, pools, and extra boards, goes beyond speculation and, at best, ventures into misleading territory. Unfortunately for the Carrier, there is no need to speculate why the PEB recommended the 22% wage increases. Indeed, PEB specifically enumerated six reasons for doing so, <u>none</u> of which have anything to do with the subject matter at issue before this Board. As PEB 250 put it:

> our analysis of the wage issues in this case were the following: 1) wage settlements and trends, both those currently being negotiated in the present environment of high inflation and a tight labor market, and the history of wage settlements between these Parties over the years; 2) the current and projected rates of change in the cost of living; 3) the levels of current and projected future profitability of the Carriers at least during the remaining term of this Agreement and the near-term thereafter; 4) the current tight labor market with low unemployment and new challenges in the areas of recruitment and retention in many of the geographic areas in which rail employees work and live; 5) the unique demands made of freight rail employees when compared with their closest counterparts in other industries; and 6) the remaining portions of our recommended package since not only must each component of the package be fair and appropriate, but compensation also must also be viewed as a whole; the existence and continuation of generous and valuable benefits must be appropriately considered when determining the appropriate wage component of total compensation.

PEB 250[2] at pg. 37. At <u>no time</u> did PEB 250 suggest that its wage increase recommendations were in exchange for the Carriers' proposals with respect to the topics at issue here. Even where PEB 250 mentions "remaining portions of our recommended package," such is limited to "the effect of increasing employee payments towards the receipt of health care" and "the additional day of paid time off and the adjustment to the BMWED travel reimbursements for those working on traveling gangs." PEB 250 at pgs. 41-42. Put succinctly, the Carrier's argument that SMART TD received wage increases in exchange for the Carrier getting a quid pro quo

[2] SMART TD Opening Submission Exhibit 14.

with respect to the topics in Articles V-VII has no basis in fact and should be completely disregarded.[3]

The reality is, with regard to Articles V-VII specifically, that PEB 250 recognized that both parties raised issues that are of great importance and that are heavily interrelated, and that the parties would benefit from directly negotiating these topics. Specifically, the unions sought more predictable rest cycles, while the carriers sought changes to scheduling, bidding, pools, and extra boards. But importantly, PEB 250 was explicit that it had no recommendation for how a final agreement should look, stating, "[w]e wish to underscore… that we express no opinions concerning the outcome of those negotiations and that we do not recommend adoption of the specific language of *any* of the proposals." PEB 250 at pg. 90[4] (emphasis added). Rather, PEB 250 explicitly recognized that "intertwined with and integrally related to those subjects, is the subject of flexibility, efficiency, certainty and fairness of work schedules, including (but not limited to) the subject of scheduled days off and that these issues must also be addressed in the bargaining." *Id*. To ensure that the process had some finality, PEB 250 afforded the parties with an arbitration backstop.

In sum, the Carrier's arguments that PEB 250 in any way supports that it is entitled to the proposed changes it is suggesting here has no merit whatsoever. Rather, it is this Board's duty to consider the whole of the proposals by the parties and impose an agreement that achieves both the interrelated goals of the Carrier and

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[3] While health benefits did not change, the Carrier received major concessions in the form of PEB 250 recommending the removal of the cap on employee contributions and adopting the Carrier's proposal with respect to vendor bidding over the objection of the unions. Carrier submission at pgs. 75, 78. As PEB 250 noted, lifting the cap shifted a substantial cost onto employees. *Id.* at pg. 41. Further, vendor rebidding provides savings to the plan over the unions' objections that such would result in significant changes for plan participants. *Id*. at pg. 76.

[4] SMART TD Opening Submission Exhibit 14.

the Union with respect to these interrelated topics. In accordance with PEB 250, neither party's proposals are to be granted any special deference, but should instead be examined on their own respective merits.

B. A Prior Arbitration Decision With A Different Railroad and A Different Union Does Not Accurately Reflect PEB 250's Recommendation.

In addition to its meritless argument that PEB 250 recommended a quid pro quo, *i.e.*, an exchange of wage increases and no changes to health benefits in exchange for the Carrier's proposals with respect to the topics in Articles VI and VII, the Carrier points to a recent arbitration decision ("CPKC Award") to argue that such exists. Specifically, the Carrier heavily relies on said award, which was between the Brotherhood of Locomotive Engineers and Trainmen, a different union representing a different craft of employees, and Canadian Pacific Kansas City Railway. The Carrier quotes this award, stating:

> 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…

Carrier Submission at pg. 49. The Carrier further argues that the matter before this Board is thus limited to "a short list of pre-determined issues" and a "limited dialogue" that the Carrier itself conveniently, solely controls. Carrier Submission at pg. 39. The Carrier's reliance on this award is two-fold. First, it contends that it controls the topics in dispute before this Board, and second, that it is entitled to a quid pro quo for the financial gains SMART TD received as a result of PEB 250, ignoring the gains it made as well. Both of these arguments fail.

It must first be noted that the award the Carrier relies upon does not accurately reflect the findings of PEB 250, which are discussed in detail in the preceding section. Indeed, as noted above, PEB 250 never suggested that the wage increases received by the unions were in any way a quid pro quo for the Carrier's proposals with respect to the topics in dispute here. Rather, PEB 250 was clear that it believed the proposals of both parties contained now in Articles V-VII comprise a multitude of interrelated concepts, and that a mutually beneficial agreement is the ideal outcome, and not a simple exchange of quid pro quos. Further, the "financial wins" obtained by the unions with respect to wage increases only reflect a so-called "splitting of the baby" between the carriers' proposed 16% increases and the unions' proposed 28% increases, and PEB 250 explained in exhaustive detail why it issued its recommendation of 22% with no mention whatsoever that such was anything other than a fair result based on the circumstances it laid out.

Further, not only does the CPKC Award misconstrue the findings of PEB 250, but the application therein is substantially different from the circumstances at issue here. Notably, the CPKC Award took issue with a different union's belated proposals that were raised for the first time in the arbitration proceeding. Carrier Submission, EX. 3 at pg. 12. In contrast, here, the proposals made by SMART TD were discussed exhaustively during negotiations regarding Articles V-VII and reflect PEB 250's observation that the topics contained in the three articles consist of a larger whole and should not be viewed on a piece-by-piece basis. Here, however, it is the Carrier who has come to the instant arbitration with belated proposals that were never discussed at the table, *i.e.*, its proposal for a 5/1 rest schedule. Accordingly, the Carrier's reliance on the CPKC Award is misplaced, where that Award is inconsistent with PEB 250 and where the bargaining history is wholly distinguishable from the facts at hand. This Board is tasked with considering the proposals of both parties on their own merits.

I. The Carrier's Proposed Implementing Terms for Articles V-VII

Despite making numerous demands for the Board to adhere to the specific rules contained in Articles V-VII, the Carrier made many deviations from those rules in its proposal, *i.e.* proposing a mandatory work/rest system that ignores employee's quality of life and is focused solely on increasing availability, reducing overall manpower, and eliminating numerous work rules not contained in Articles V-VII. As demonstrated below, the Carrier's proposals would result in an unbalanced and unworkable agreement that goes against the express intent of PEB 250, while the Organization's proposals result in an equitable outcome for both parties.

A. The Carrier's Article V Proposal

The Carrier's proposal for Article V would not improve the quality of life for employees. Instead, it would create unpredictable call times and erratic work schedules, and impose financial harm on employees working in pool freight service. In contrast, the Organization's proposal for Article V will provide significant efficiencies, ensure manpower availability, and give employees in through freight a flexible and predictable work-rest schedule.

1. Work/Rest Schedules – Pool Freight

The Carrier's proposed 5&1 work-rest schedule deviated from the intent of Article V and is not a viable option for all pools in through freight service. It is a one-size-fits-all approach that does not address the complexities of train service and will result in substantial hardship for employees working in certain types of service. While it may be a schedule that shorter mileage pools elect to utilize[5], as they would need more work opportunities than longer pools, it would not be beneficial to medium and longer mileage pools.

On the contrary, the Organization included multiple work rest models that would allow pools to select the appropriate work/rest schedule for the mileage/length of their pool. This model would increase availability, as employees would have greater access to time off and the ability to plan for their voluntary days off in advance, thus reducing unplanned non-compensated layoffs. A single day off after five days, as Carrier proposed, leaves employees worse off than the time off under the current Rail Safety Improvement Act (RSIA), which requires 48 hours of rest after an employee works six consecutive days. The Carrier's proposal would allow it to avoid this 48-hour mandatory rest period and force employees to work more, irrespective of their wishes. **Exhibit 1**. This is a transparent attempt to extract more work from employees at the expense of their ability to take time off, which precisely goes against the recommendations of PEB 250.

Furthermore, the Carrier's desire to eliminate all "turn rest" rules deviates from Articles V-VII, and is contrary to the intent of PEB 250 and Public Law No. 117-216, which instructed the parties to include/create <u>additional</u> rest opportunities. Employees need additional rest opportunities, not the reduction or elimination of such.

[5] In reference to the 5/1 work rest schedule only. Carrier's proposed regulation would reduce earning potential for all employees in through freight service.

2. Financial Penalties – Guaranteed Pool Freight

Penalizing employees in guaranteed pool freight for observing a rest period or forfeiting guarantee pay for any non-compensated status (including paid sick days) would unfairly harm those employees financially. It also forces the junior employees assigned to the boards, who have minimal compensated time off compared to more senior employees and are forced to vacation slots early in the year based on seniority, to remain 100% available most of the year, or forfeit their guarantee for a single non-compensated layoff. To put succinctly, the Carrier wants the right to penalize the most overworked employees for taking any time off. This does not satisfy the quid pro quo and would cause significant stress on employees[6].

The Carrier's proposal would nullify the July 31, 2023, Time Off for Illness and Wellness Agreement, contained in Article I, G, **Exhibit 2**, which specifically mandates that paid sick days be treated in the same manner as other compensated leave. Article I, G states:

> *Employees working positions that provide for a guarantee, the compensation for days of paid sick leave will be handled in the same manner as other compensated leave under any new or existing guaranteed board agreements.* ***Paid sick leave will also be treated in the same manner as other compensated leave with regard to the offset and/or forfeiture of guarantee under any new and/or existing guaranteed board agreements****.*

The Carrier did not seek this concession from the Organization during formal bargaining, thus making it improper before the Board. Even if it was permitted,

[6] As explained in previous sections, there is a quid pro quo in balancing Articles V with VI and VII, distinguished from the quid pro quo posed by Carrier.

maintaining the current forfeiture rules for guaranteed pool freight and allowing employees to observe voluntary rest days without penalty would be proper, satisfy a portion of the quid pro quo, and well within the Boards jurisdiction.

3. Mandatory Work/Rest Schedules – Guaranteed Extra Boards

The Carrier's proposed work/rest schedule for extra boards would require an employee to observe a day off after five consecutive starts. This is expressly prohibited in Public Law No. 117-216, Article V, Q&A 9., which states "**Article V does not permit an arbitrator to impose mandatory days off.**" This language cannot be clearer. This Board cannot impose mandatory days off. Rather, any days off must be voluntary per the terms of Public Law No. 117-216.

Additionally, there is no predictability as to when an extra board employee would obtain the day off, as it's based on starts, not available days. Employees working on an extra board may go weeks before they acquire five consecutive starts, thus preventing them from observing a rest day. Instead, they would be "on-call" this entire period with no idea when they may get a call for work, which does nothing to advance the idea of schedule predictability. Before PEB 250, the Carrier claimed it was seeking more predictability for employees yet now proposes a work/rest cycle that does nothing to address this. PEB 250 at pgs. 87-88[7]. Indeed, this system would afford employees no ability to control their schedule or obtain rest when they want or need it.

4. Financial Penalties – Guaranteed Extra Boards

The inclusion of paid sick days as an occurrence towards forfeiture of guarantee is contrary to what the parties agreed to in the Time Off for Illness and Wellness

[7] SMART TD Opening Submission Exhibit 14

Agreement (Exhibit 2) and would discourage or prevent employees from using such when needed. Indeed, the lack of sick days was the subject of substantial public debate and resulted in agreements governing such. The Carrier's proposed penalty for exercising this right eviscerates the hard-fought rights of employees with respect to taking sick time without worry of receiving a penalty from the Carrier.

B. The Carrier's Articles VI and VII Proposals

Several provisions in Carriers proposal for Articles VI and VII are not items contained in Public Law No. 117-216, nor did Carrier seek such at PEB 250. As described below, these items are efficiencies that adversely affect employee's quality of life and wages.

1. Automated Bid Scheduling – Daily Preference – No Bid – Pass ups

The Carrier's proposed terms would eliminate daily preference boards and pass up rules, neither of which are specific items contained in Articles VI or VII. The Carrier did not seek to eliminate these rules before PEB 250 and is attempting to achieve gains not acquired in Public Law No 117-216. This is the same approach that it claims the Organization is attempting with its proposals and should be summarily rejected.

Daily preference boards are not antiquated nor are vestiges of years gone by, as the Carrier claimed in their opening submission. These boards allow employees to modify their schedule to coincide with home and life demands, without marking off, thus increasing their availability.

Employees assigned to daily preference boards are governed by the Daily Preference Agreement, **Exhibit 3**, and the Five-Day Work Week Agreement, **Exhibit 4**, which ensure they obtain five starts per week. They are not absent for extended periods of time as the Carrier alludes to, except in situations where the Carrier mishandles the daily preference board and assigns more employees to the board than necessary. In those circumstances, the Organization intervenes and works with the Carrier to correct the imbalance, as exhibited in Exhibit 3.

Daily preference boards are the very process the Carrier sought before PEB 250. Employees assigned to these boards are required to maintain an electronic list of standing bids for assignments in the yard. Bids are run daily, and employees are assigned to positions in order of individual preference as submitted in their bid.[8] The following day's assignments are then posted electronically for employees to view. It's a simple electronic system for bidding and awards assignments in a manner that complies with every aspect of Article VI without modification, and should remain in place and unchanged.

Elimination of the pass-up provisions, and the reason for such, as the Carrier proposed, would limit employees' use of their seniority. The Organization's proposed remedy addresses concerns brought forth by Carrier by executing employee's pass-up request at the next job assignment change time.[9] This gives both parties what they desire at no cost to Carrier.

2. Self-Supporting Pools

The Organization recognized the Carrier's desire to establish self-supporting pools throughout formal bargaining, which is evidenced in its proposals to Carrier throughout bargaining.[10] The proposed provisions changed throughout the process, as typically occurs in negotiations, and gradually aligned more with the specific terms

[8] SMART TD Opening Submission, Exhibit 18, Article VI (c)(1)
[9] SMART TD Opening Submission, Appendix B, page 106
[10] SMART TD Opening Submission, Exhibits 23, 29, & 32

the Carrier was seeking, demonstrating the Organization's willingness to negotiate a voluntary agreement.

The Carrier's depiction of the savings it projects to acquire when self-supporting pools are implemented is a misrepresentation of the data and fails to account for the staffing reductions that will occur to protecting extra boards as the result of such. The Organization explained the savings the Carrier will acquire in self-supporting pools in its opening submission, with data to validate those savings.[11]

When Carrier officers declared in negotiations of their intent to reduce manpower by 60% - 80% once self-supporting pools were in place, the Organization compiled data from four locations across the Carrier's network to verify if such reductions were possible. **Exhibit 5**. The data revealed that an average of 83.25% of work an extra board protects derives from vacancies in pool freight. The remaining work/starts were protecting irregular service (hours of service relief, vacancies on local assignments, irregular work train service, short turnaround service, etc.). The data contained in Carrier's opening submission grossly underestimated the number of extra board positions that would be eliminated with the implementation of self-protecting pools.[12] An accurate accounting of positions Carrier will eliminate upon implementation of self-protecting pools is vital as countless employees will be adversely affected through reduced earnings or employment.

3. Irregular Service

The combination of irregular service (hours of service relief, short turnaround service, unassigned work train service) and protection of pool freight vacancies was

[11] SMART TD Opening Submission, Exhibit 43
[12] Carrier estimated a savings of $2.93M with 78 total extra board positions eliminated.

never brought forth by the Carrier at PEB 250 nor was it obtained in Article VI or VII of Public Law No. 117-216. The Carrier is attempting to combine these distinctly separate classes of work under the guise of irregular service being a "pool freight" vacancy. The Carrier lacks any basis or agreements to support this fallacy, and the Board should not entertain the combination of irregular service into pool freight service. Put simply, these are distinctly separate types of work, and the Carrier is again acting outside the confines of Article V-VII to obtain something from this Board that it would be unable to in the absence of a voluntary agreement.

Since the inception of pool freight service, irregular service has never been considered a vacancy in pool freight. When Interdivisional service was negotiated in the 1970's, the parties clearly defined that hours of service relief was separate and distinct from pool freight service. Agreements have been negotiated over the years that recognize separation between vacancies in pool freight vacancies and irregular service. **Exhibit 6**.

Indeed, the 1972 Interdivisional Agreement[13] states, page 73, in pertinent part:

> Part VII
> Extra Boards
>
> Section 1. **Irregular and unassigned non-interdivisional service, including dog-catching, shall be protected and manned by extra employes** from the seniority district over which such service operates.
> Section 2. **Vacancies in interdivisional service** occurring at the far terminal of the turn **will be protected and manned by extra employes** from the home terminal of the turn. If such extra employes cannot be made available at calling time of such turn at the far terminal the vacancy will be protected and manned in accordance with the provisions of the supplemental agreement dated October 7, 1970

[13] SMART TD Opening Submission, Exhibit 59

entitled "Brakemen Used Off Assignment": and in that event, the extra employe called from the home terminal will protect the resulting vacancies for which such extra employes are available at the far terminal.

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

The parties have never disputed the difference between irregular service and pool freight vacancies. This is illustrated in correspondence contained in SMART TD Opening Submission, Exhibit 42, where the Organization took exception to the Carrier's calculation of mileage on protecting extra boards.

When pool freight employees are called off their assignment to work irregular service, due to the extra board being exhausted, such miles are registered on the extra board mileage report as ZZZZ miles. This mileage represents irregular service the extra board was required, but unable to protect, and was performed by pool freight employees. Such miles are not tabulated into the pool freight mileage reports as the work is a separate class of service that contractually belongs to the protecting extra boards.

Additionally, Public Law No. 117-216 prohibits self-supporting pools from protecting assignments outside of the pool, except through mutual agreement. It would not be within the Boards authority to impose such.

Public Law No. 117-216, Article VII, Q&A 2[14].:

Q2. **Where a self-supporting pool is implemented** pursuant to Article VII, **will Employees on those assignments be**

[14] SMART TD Opening Submission, Exhibit 18

expected to protect assignments outside of that self-supporting pool?

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

The Organization presented numerous arguments in its opening submission outlining the adverse effect of combining irregular service into pool freight. In the Carrier's opening submission, they confirmed the inconsistent nature of extra board service and unpredictability of the work.

The Carrier's proposal to shift irregular service (hours of service relief/short turnaround service, and unassigned work train service) from protecting extra boards to pool freight service would impose this unpredictability upon pool freight, creating a greater number of boards with unpredictability than what exists today. Again, this is incompatible with the recommendations of PEB 250.

This unpredictability would also expand into assigned service, such as locals and yard assignments. The Carrier's proposal would abrogate current agreements prohibiting the use of these employees for irregular service, causing disruption to those assignments. It would increase the already overburdened workload of employees working these regular assignments without compensation, thus reducing their overall quality of life.

Additionally, the Carrier is seeking to eliminate all work rules pertaining to calling procedures in instances where the protecting extra board is exhausted. These existing provisions serve to deter the Carrier from short staffing protecting extra boards. The elimination of these provisions would cause constant staffing issues and future disputes and bring considerable destabilization to other assignments/boards as they would be continually used in lieu of protecting extra boards. Creating such chaos would wreak havoc for employees on all assignments, eliminate any predictability they currently experience, and impede their ability to plan any time with family or for personal reasons. Further, such would result in significant disruptions in the Carrier's operations as Crew Management Services would be using employees off their regular assignments to work irregular assignments, leaving their regular assignments vacant and the work those regular assignments protect delayed.

Based on the foregoing, the Carrier's proposals with respect to irregular service are: (1) outside the scope of Articles V-VII; (2) separate and distinct from pool freight service; and (3) would result in significant disruptions for both employees and the Carrier. Accordingly, these proposals should be rejected.

4. Board Regulation

The Carrier's proposed pool freight regulation table greatly deviates from the table discussed and agreed to in formal negotiations and would cause significant reduction to pool freight employees' earnings. During bargaining, the Carrier only sought a provision to convert current mileage regulation to start-based regulation that includes a predetermined time period, and ability to predict the future number of pool starts utilizing technology. Now, Carrier seeks to reduce the starts pool freight employees would work to and from the objective terminal and omit the starts such employees would be forced to protect if irregular service was covered by the pool.

Such method for pool freight regulation would result in pool freight employees protecting starts their particular pool is designed to protect under the regulation table, and the additional starts which are not included in the regulation table. This is not an improved quality of life as it increases starts an employee in pool freight would be expected to protect without limit and without consistency. It also negates any provision requiring the parties to mutually regulate pool freight. For example, a pool freight board may be operating within the starts range – regarding starts to and from the objective terminal – but is continually exhausted due to excessive starts in irregular service, which is not included in the pool freight regulation table. Should the board deem Carrier's proposal to be proper, the inclusion of all starts, regardless of class of service, should be used to tabulate pool freight regulation.

Article VII, (b) does not give Carrier the ability to reduce pool freight employees' earnings as it proposes to do. Further, reducing pool freight employees' earnings goes against the Carrier's commitment to providing an equitable quid pro quo. The regulation provisions contained in Appendix B, Article V, of the Organization's opening submission were agreed upon by the parties since the early stages of formal bargaining. The Carriers' decision to deviate from such terms and reduce the earnings of pool freight employees through the reduction of monthly starts is an overt attempt to gain savings and increase employee availability – as employees would need to obtain every available start possible to make a portion of their previous wages.

The Carrier argued in their submission to PEB 250[15] that regulating pool freight using starts would allow employees to obtain more starts and, consequently, make more money.

Carrier Submission to PEB 250 - Page 36:

> "In addition to being simpler, regulation by starts is more accurate and fair. Among other advantages, regulating by starts inherently accounts

[15] SMART TD Opening Submission, Exhibit 8

for federally-mandated rest. As a result, employees in the pool have the opportunity to make more money because they spend less time on the sidelines and more time actually working, and employees outside of the pool are disrupted less often by calls to fill pool vacancies. Regulating pools based on starts is therefore a win-win proposition."

Union Pacific's former Chairman, President, and CEO Lance Fritz acknowledged the need to improve employees' quality of life and maintain their wages:

> ***[W]e've talked publicly about****, you, inside of the* ***collective bargaining agreements****, we can have boards that are staffed at high miles high turns or low miles low turns. Every board has a range. Uh, so* ***we can deliberately staff boards with more factor of safety than less****. Now* ***we got to balance that out so employees earn the expected wages*** *that they- that* ***they hired for****, uh,* ***year after year after year****.*

STB Embargoes on Union Pacific transcript[16], pg. 12.

The Carrier's proposed pool regulations that are now before the Board contradicts previous commitments and positions the Carrier publicly presented when seeking start-based regulation in pool freight. In contrast, the Organization's proposal would maintain the current earnings such employees receive today, while maximizing their productivity, not reduce it as Carrier proposes.

5. Supplemental Extra Boards

Despite the industry concern and Carrier's acknowledgment of the purpose for supplemental extra boards, the Carrier here has proposed the abolishment of these vital boards. Indeed, the Carrier has recognized the critical role supplemental extra board thresholds play, admitting that such are *"intended to serve as advanced indicators of the potential need for hiring and to serve as a triggering mechanism*

[16] SMART TD Opening Submission Exhibit 15

that would prompt careful monitoring and analysis of the manpower situation and if a manpower deficit, as measured by these thresholds, continues to exists, would initiate hiring and training programs." **Exhibit 7,** page 6. Maintaining adequate staffing levels is a serious concern with respect to the Carrier's operations and has been the subject of numerous Surface Transportation Board public hearings which addressed the topic. It was noted that the Carrier had a very difficult time managing its staffing levels and was short on manpower for an extended period of time, resulting in disruptions to freight rail service throughout the country.

The outright abolishment of supplemental extra boards, as proposed by the Carrier, is unnecessary and would cause harm to the Carrier's ability to protect the needs of service or predict future manpower hiring needs. Currently, supplemental extra boards are maintained/staffed at a percentage of the guaranteed extra board they protect (10%-33%).[17] As protecting extra boards are reduced with the implementation of self-supporting pools, such reductions will also reduce staffing levels on supplemental extra boards. The Organization's proposed remedy would provide the Carrier with efficiency gains and retain these boards, thus ensuring the necessary manpower exists to meet current and future manpower needs and business growth.

6. Pre-Arranged Layoff System (PALS)

The Carrier's proposed remedy to the Board recognized the need to increase thresholds to the Pre-arranged Layoff System (PALS) but falls short of what is needed to effectuate a positive change for the workforce. As outlined in SMART TD's opening

[17] Example: Guaranteed extra with 30 employees assigned would require the supplement extra board to be staffed with 10 employees (33% staffing requirement)

submission, thresholds must be increased significantly for employees if they are to gain additional access to compensated time off.

Increasing the PALS threshold by 1%, as the Carrier proposed, would have little to no impact on most boards across its system. For example, a board with 100 employees, which is extremely rare, would only be allowed 1 additional slot per day. A board with 20 employees would see no additional slots per day. The Carrier's offer is essentially a sleeve off their vest and would have no impact on improving employees' quality of life. Importantly, this exacerbates the issue of employees being entitled to compensated time off on paper, but being unable to actually use it.

7. Trade Turn Provision

The Carrier's proposed terms for trading turns is limited to non-guaranteed pool freight, thus preventing employees in guaranteed pool freight from utilizing this provision to obtain rest or attend to personal matters. Conversely, the Organization's proposal encompasses all pool freight (non-guaranteed and guaranteed) to ensure employees are treated equally. It also allows employees in both OK status and in required (RSIA) rest to trade turns. This will increase potential availability as an employee who is towards the top of the pool freight board in required rest may trade with an employee further down the board who is rested and available. Overall, the Organization's proposal strikes the appropriate balance and results in a win/win for both the Carrier and the Organization. It prohibits the abuse of the provision, provides all pool freight employees with flexibility and rest outside the RSIA, and increases employee productivity.

II. Competing Carriers' Agreements

Turning to matters beyond the specific provisions of the Carrier's and the Organization's proposals, it is important to debunk some of the flawed reasoning that the Carrier employs in support of its argument. Throughout their opening submission, the Carrier made numerous arguments with respect to other carriers' agreements,[18] opposing the terms and conditions contained in each. Although those agreements were voluntary, they do establish a basis and pattern for what constitutes a balanced quid pro quo in Articles V, VI, and VII.

While comparing to Norfolk Southern Railway Company ("NS"), the Carrier stated an NS style agreement would require an additional 1,000 employees to implement. In so asserting, the Carrier conveniently omits the manpower gains it will achieve with reductions to extra boards when self-supporting pools are implemented.[19] Indeed, it defies logic that another carrier would agree to a CBA that requires it to employ 1,000 more employees with no gain. The Carrier here also took the position that voluntary rest days create uncertainty and less availability than mandatory rest days, which is false and contradicts their own proposal for a voluntary rest day model in pool freight.

Additionally, the Carrier argued in opposition to the BNSF voluntary work/rest agreement, claiming it has caused greater uncertainty and less manpower availability to run trains. This is patently false because under voluntary work/rest rules, availability increases, and guarantee payments reduce. As the Carrier described in its opening submission, the BNSF agreement contains a mechanism that allows for re-

[18] SMART TD Opening Submission, Exhibits 38 & 39
[19] SMART TD Opening Submission, Exhibit 43

negotiation if either party believes the work/rest schedule is not meeting the objectives of the agreement. Indeed, as a result of the issues under the prior agreement, BNSF and the unions have met and agreed to convert many mandatory work/rest schedules to voluntary schedules, as voluntary work/rest schedules have proven to increase productivity while maintaining acceptable guarantee payments. **Exhibit 8**.

Furthermore, BNSF's network traverses through the same states and directly competes with UP for many of the same customers. **Exhibit 9**. The Carrier's description of BNSF's reports to the STB and implementation of work-rest agreements causing trains held for manpower is speculative and not an accurate depiction of the facts. Such reports contain several criteria for trains being held; crew, locomotive power, and other. BNSF experienced 29.4% more trains held for locomotives and other events than Union Pacific did in 2024. **Exhibit 10**. Locomotive failures and other events, such as broken rails, switches or signal, all directly affect manpower in TE&Y and will exhaust TE&Y manpower quickly as hours of service is needed until the issue is resolved.

III. RSIA and Smart Rest

RSIA was a positive step towards improving safety in the rail industry and established minimum rest requirements and maximum working hours for employees. Prior to RSIA, employees only received eight hours between shifts,[20] and had no limit on working hours or days per month.

[20] Eight hours included time to and from work, rest and call time. For example, an employee would tie up at 08:00, commute home, obtain rest, receive their call at 14:30, and report back to work at 16:00. This cycle repeated unless traffic slowed, or the employee was granted compensated time off or marked off non-compensated.

Due to Carrier's tight regulation of boards, employees assigned to such were continually observing mandatory federal rest.[21] This situation caused two problems. First, days spent in federal rest were deducted from the employees' guarantee earnings, thus limiting their ability to make money. Second, having numerous employees in federal rest caused regulation issues for the Carrier, in addition to the fact that more employees were needed on the boards to meet the needs of service.

To address this issue, the parties negotiated Smart Rest Agreements at various locations across the system. These agreements either allowed employees to voluntarily observe a day of rest or required them to observe a day of rest after four or five consecutive starts. Such agreements struck a beneficial balance to both parties, as employees who needed rest or wanted to obtain more starts could elect for the rest day, while the Carrier obtained more productivity from those employees who observed the day of rest, Exhibit 1. On the other hand, employees less interested in maximizing earnings had the ability to receive their federally mandated rest.

Some mandatory Smart Rest Agreements were cancelled by the Organization because they caused employees on certain boards to miss work opportunities. This occurred on pool boards where employees were not guaranteed earnings and train traffic was concentrated on certain days of the week. Several employees would be forced to observe a rest day when traffic was heavy, causing them to miss their work opportunity. A voluntary agreement would have solved this problem, but the Carrier would not agree to such. This further supports the implementation of voluntary work/rest schedules as SMART TD proposed as employees may elect to remain

[21] Federal Rest was triggered when an employee worked 6 or 7 consecutive days. 6 consecutive days mandates 48 hours off and 7 consecutive days mandates 72 hours off.

available to obtain starts on days traffic is heavy and observe rest days when it is not.

IV. Attendance Policies

The Carrier's imposition of attendance policies that are unreasonable has been a long-standing dispute and was brought forth by the Organization at PEB 250. These policies coerce employees who are fatigued, sick, or have other compelling reasons into reporting for work. Although PEB 250 did not adopt the Organization's proposal for attendance policies, it did recognize the adverse effect it has on employees[22].

> *Page 41:*
> *"**Changes related to the introduction and application of PSR resulted in operating craft employees being required to work and to be held over more frequently and with lessened opportunities for time off work that was sufficiently certain to remain the employees 'own time to be used for pre-planned events**. Cutbacks in the numbers of available employees affected all of the crafts and classes in some way increasing what they were expected to contribute. **Imposition and revision of attendance programs exacerbated some of these burdens**."*

The Organization has progressed countless cases through the arbitration process for employees who were disciplined for alleged violations of Carrier's attendance policy with strong success of getting those cases resolved in favor of the employee(s). **Exhibit 11**. Such results are evidence of the unreasonableness of the policy and need to provide greater access to employees' contractually earned time off.

[22] SMART TD Opening Submission, Exhibit 14, page 41

V. Crew Availability

PEB 250 remanded Articles V-VII back to the property for the parties to negotiate. A portion of what the Carrier sought was improved crew availability. The Carrier states its proposal will give pool employees more time off, albeit to the detriment of their earnings and when irregular service demands are low, and the Organization's will reduce on-duty time to an unnecessary degree. This is simply untrue. The Organization's proposals strike a balance that will provide employees with time off should they so choose, while providing the Carrier with additional availability. What the Carrier seeks is a system where there is no consideration given whatsoever to employees, and it puts forth severely flawed arguments to substantiate its position.

For example, the Carrier provided a chart that compared current on-duty time with projected on-duty time. Data listed in the "Current Hours" column of the chart is inaccurate, as the Carrier omitted pool freight employees' time away from home and time spent obtaining required rest, which greatly increases their hours. **Exhibit 12**. The data listed in the "SMART TD Last Proposal" column was calculated assuming an employee would observe all available voluntary days off, for which there is no basis to assume. Data from the BNSF indicates that many employees elect not to observe their voluntary days off on a regular basis, thus increasing availability.

Availability on extra boards will also increase with the implementation of self-supporting pools as proposed by the Organization. Extra board employees will no longer protect pool freight vacancies, but will continue to protect irregular service, local service, hours of service relief, short turnaround service, unassigned work train service, etc. The removal of pool freight vacancies allows the Carrier to obtain more productivity from an extra board employee because they are not spending unnecessary hours at the away from home terminal. The example below illustrates how self-supporting pools will decrease reliance on extra boards and increase an extra board employee's productivity. This is in addition to the extra board reductions the Carrier will obtain through Articles VI and VII.

Current Extra Board	With Self-Supporting Pools
1/1/25: Called for pool vacancy at 06:00	1/1/25: Called for HOS[23] Relief at 06:00
1/1/25: Tie up at AFHT[24] at 18:00	1/1/25: Tie up - return to extra board at 16:00
1/2/25: Called from AFHT at 08:00	1/2/25: Called for Irregular Service at 04:00
1/2/25: Tie up - return to extra board at 20:00	1/2/25: Tie up - return to extra board at 14:00
1/3/25: Called for pool vacancy at 08:00	1/3/25: Called for HOS Relief at 02:00
1/3/25: Tie up at AFHT at 20:00	1/3/25: Tie up - return to extra board at 12:00
1/4/25: Called from AFHT at 13:00	1/4/25: Called for HOS relief at 00:00
1/5/25: Tie up - return to extra board at 01:00	1/4/25: Tie up - return to extra board at 11:00

1. Make-Up Turns

The Carrier's depiction of adding turns outside the weekly adjustment process as make-up turns is inaccurate, exaggerated, and misleading. Pool freight is regulated jointly between Crew Management Services and SMART TD Local Chairpersons. **Exhibit 13**. The use of make-up turns occurs when an entire pool freight board is exhausted and/or all employees on the pool board are observing mandatory rest. This rarely occurs, and when it does, a minimal number of make-up turns are used. When turns are needed outside of the weekly adjustment period, the parties discuss such need and will add new turns to the pool freight board, not make-up turns.

Many assignments across Carrier's system are inaccurately labeled as make-up turns, thus accounting for the gross overestimate of such turns the Carrier claimed it utilized over the past four years. **Exhibit 14** contains hundreds of examples of such inaccuracies in the past couple of months. In these examples, Crew Management Services creates job IDs as make-up turns for hours of service relief. At one location,

[23] Hours of Service Relief
[24] Away From Home Terminal

the Carrier has no pool freight boards operating out of the terminal, yet Crew Management Services utilized countless "make-up" turns throughout the entire year for hours of service relief. To put it succinctly, this is a problem that does not exist. The only evidence upon which the Carrier relies is entirely inaccurate and should not be given any merit.

2. Displacements

The reduction in displacement time will equate to a significant increase in productivity which is undervalued in Carrier's proposal. A standing bid system itself will greatly reduce displacement times as employees will immediately move to their next assignment. The remaining displacements that occur would be cut in half under Carrier's proposal, expediating Carrier's ability to utilize the displaced employees. Should the Board determine this reduction appropriate, consideration of its value and what is fair to both parties should be considered.

Separate from the reduction in displacement time, forcing employees to displace the junior employee in a Hub when they do not have seniority to hold any choices on their permanent bid sheet would cause considerable harm to employees. For example, an employee who is displaced in Ogden, Utah, and forced to displace the junior trainperson located in Las Vegas, Nevada, would have to drive 457 miles to report for work, despite there being positions they could hold in Salt Lake City, Utah, which is only 44 miles away. Simply put, this system is overly punitive in comparison to SMART TD's, which would provide an avenue to place these employees on assignments without hardship. There is no doubt that this is entirely unreasonable and will result in employees resigning their employment with the Carrier, leading to further manpower shortages. However, should the Board deem the Carrier's proposal of this provision more favorable, considerable consideration should be given to providing travel time, travel expenses, lodging, and meal expenses to employees who are forced away from their home terminal. Otherwise, there is little chance of retaining employees who must travel hundreds of miles from home at their own expense.

VI. Previous Work Rest Agreements

Past efforts to negotiate and implement work-rest models were successful but ultimately failed due to the Carrier's staffing and cost concerns. There is a distinct difference between prior negotiations/agreements and the instant matter before the Board. Previous agreements were not governed by Articles V-VII of Public Law No. 117-216, requiring the parties to bargain in good faith to reach an equitable agreement.

PEB 250 recognized the Carrier's desire to obtain significant efficiencies – the Organization's desire to establish predictable days off to improve employee's quality of life – and how the parties could achieve both objectives in an equitable manner. That was not the case in prior work/rest agreements as there was expectation of a balanced quid pro quo imposed upon the parties.

In a letter to Union Pacific, dated January 17, 2001, UTU (now SMART TD) General Chairman Babler refutes Carrier's reasons for canceling the work/rest agreements and the importance of providing such to employees, which still exists today. **Exhibit 15**.

VII. Formal Negotiations

The allegation that SMART TD cancelled the third day of negotiations in Las Vegas on June 6, 2024, is patently false. The parties had intense discussions throughout the meeting and mutually agreed to conclude the meeting early as tensions were high, and both sides needed time to digest and review what was discussed. Regardless of the Carrier's misrepresentation of this meeting, it has no excuse for its absence the following week with no notice given to the Organization.

VIII. Conclusion

Based on the foregoing, the Carrier's proposal should be rejected and the Organization's adopted. The Organization's proposal is a remedy that gives both parties what they sought before PEB 250 and balances the quid pro quo of Article V with Articles VI and VII.

Should the Board accept the Carrier's proposal, the Carrier should be limited to the specific manpower reductions it presented to the Board. If the Carrier discovers additional reductions/savings may be achieved than estimated, the new reductions/savings should be brought back before the Board to determine if such should be allowed and determine an equitable solution.

Lastly, it is well within the Boards authority to ensure any employees who may be adversely affected (furloughed) by its decision are provided protections as contained in Appendix B, Side Letter #3 of the Organizations proposed remedy.[25]

[25] SMART TD Opening Submission

SPECIAL BOARD OF ADJUSTMENT 1208

Case No 1

SMART Transportation Division
v
Union Pacific Railroad

With

Neutral Earlene R Baggett-Hayes

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Appendix A
Organization's Rebuttal
IGN and T&P Properties

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Table of Contents

I. Introduction

This submission rebuts the Carrier's arguments regarding their attempted modification of Extra Boards and Supplemental Extra Boards on the International Great Northern (IGN) and Texas & Pacific (T&P) properties under Article VII(b)(6) of Public Law 117-216. The Organization contends that the Carrier's attempt to impose changes to these boards violates the perpetual moratorium protections outlined in the 1993 and 1996 Crew Consist Agreements[26] and upheld by the PLB 7960 LaRocco Award[27].

The Carrier's reliance on procedural arguments, misrepresentation of mutual consent, and omission of critical arbitration awards reveals a flawed and disingenuous position. This rebuttal addresses each of the Carrier's claims, emphasizing the sanctity of the moratorium provisions and the necessity of local handling for crew consist agreements.

II. Historical Context: How We Arrived at Arbitration Board 7960

The dispute leading to Arbitration Board 7960 is rooted in the Carrier's attempts to unilaterally reinterpret long-standing Crew Consist Agreements (CCAs) and associated moratorium provisions. These efforts began in October 2019, when the National Railway Labor Conference (NRLC), representing multiple railroads including Union Pacific (UP), sought to compel bargaining over crew consist provisions on a national level[28]. This marked a significant departure from the historical handling of such issues, which had always been negotiated locally.

[26] SMART TD Opening Submission Exhibits 67-69.
[27] SMART TD Opening Submission Exhibit 71.
[28] SMART TD Opening Submission Exhibit 1.

Key Events Leading Up to Arbitration Board 7960

1. **Carrier's Push for National Bargaining:**
   In October 2019, NRLC Chairman Brendan Branon issued a letter to SMART TD President Jeremy Ferguson, asserting that moratoriums in the Crew Consist Agreements only barred renegotiation of benefits for protected employees, not bargaining over crew consist provisions. The carriers also filed a federal complaint seeking declaratory and injunctive relief to compel bargaining and arbitrate the moratorium question.
2. **Legal Challenges by SMART TD:**
   SMART TD opposed the carriers' actions, emphasizing that crew consist issues were local matters, as confirmed by prior judicial rulings. The Organization argued that the carriers' attempt to impose national arbitration violated the Railway Labor Act (RLA). SMART TD filed suit in the District Court for the District of Columbia, contesting the legality of the National Mediation Board's (NMB) appointment of a SMART TD representative to a single national arbitration board.
3. **Court Proceedings and Carrier Retraction:**
   During court proceedings, the carriers withdrew their request for a single national arbitration board, rendering the court case moot. This withdrawal highlighted the carriers' recognition that their approach was procedurally flawed.
4. **Carrier's Shift to Local Arbitration Requests:**
   Following the court case, the carriers pivoted to a strategy of serving local Section 6 notices and establishing individual Public Law Boards (PLBs) for each property. These notices sought to arbitrate the interpretation of moratorium provisions on a property-specific basis.
5. **Procedural Neutral Arbitrations:**
   In response to procedural objections raised by SMART TD, the carriers requested procedural neutrals to address whether their claims were arbitrable under the RLA. Despite SMART TD's objections and ongoing jurisdictional

issues before the National Railroad Adjustment Board (NRAB), the NMB proceeded with appointing procedural neutrals for each PLB.

6. **Establishment of Arbitration Board 7960:**
   Arbitration Board 7960 was established as part of this broader effort to resolve procedural disputes related to the carriers' claims. The specific focus of this Board was on the moratorium provisions in the CCAs governing Union Pacific's properties, including the IGN and T&P territories.

The Role of PLB 7960

The LaRocco Award issued by PLB 7960[29] definitively resolved the moratorium question on the IGN and T&P properties. The carriers themselves requested a "final and binding resolution" to settle the crew consist moratoria disputes. The LaRocco Award upheld the perpetual nature of the moratoriums, emphasizing that modifications to these agreements could only be made by mutual consent and reaffirming that crew consist issues are inherently local matters that could only be negotiated voluntarily.

Current Dispute: The Carrier's Attempt to Reopen Resolved Issues

Arbitration under the RLA is "final and binding." 45 U.S.C. § 153 First (m). Despite the finality of the LaRocco Award, the Carrier is now attempting to circumvent its binding conclusions by invoking Article VII(b)(6) of Public Law 117-216 to impose changes to Extra Boards on the IGN and T&P properties. This action directly contradicts the moratorium protections upheld by PLB 7960 and undermines the final and binding resolution the Carrier sought when it requested arbitration.

[29] SMART TD Opening Submission Exhibit 71

III. Mutual Consent Has Not Been Granted

The Carrier misinterprets the concept of "mutual consent" in the 1993 agreements. Consent for changes must be explicitly provided for each specific modification to the crew consist agreements governing the IGN and T&P properties.

In addition, assuming arguendo that consent is even up for debate, the Organization argues that the Carrier fundamentally misrepresents the concept of mutual consent. Public Law 117-216, which forms the basis for the changes under Article VII, including Article VII(b)(6), was enacted only after the original tentative agreement failed ratification by SMART TD membership. The Organization explicitly rejected the terms and conditions in that agreement. As a result, the provisions were imposed upon the parties through congressional action under Public Law 117-216, not through voluntary agreement or mutual consent.

The imposition of terms by Congress under Public Law 117-216 cannot retroactively be construed as "mutual consent" between the parties. The forced nature of these terms highlights the lack of genuine agreement, especially as it pertains to provisions that directly conflict with long-standing moratorium protections on the IGN and T&P properties. To suggest otherwise is to distort the very concept of mutual consent, which requires active and explicit agreement between both parties.

The 1993 moratoriums explicitly state that changes require mutual agreement, and participation in broader national negotiations does not constitute such agreement for the IGN and T&P properties. Side Letter No. 2 from SMART TD's June 14, 2024, proposal[30] underscores this by reaffirming that changes to Extra Boards on these properties are prohibited without explicit mutual consent.

[30] SMART TD Opening Submission Exhibit 32.

IV. Side Letter No. 5 Was Never Raised On Property

The Carrier's reliance on Side Letter No. 5 of the 2022 National Agreement to justify changes to Extra Boards and Supplemental Extra Boards on the IGN and T&P properties is fundamentally flawed and unsupported by the facts. Moreover, the Carrier's arguments regarding Side Letter No. 5 are misleading and fail to address the explicit protections afforded to these properties under the perpetual moratorium provisions of the 1993 and 1996 CCAs.

The Carrier first referenced Side Letter No. 5 of the 1996 National Agreement in their letter dated August 19, 2024, as the basis for their alleged right to modify Extra Boards on the IGN and T&P properties. However, in their current submission, they now rely on Side Letter No. 5 of the 2022 National Agreement under Public Law 117-216, arguing that it authorizes changes to Extra Boards on these properties and abandoning their previous on-property argument. This inconsistency underscores the lack of coherence in the Carrier's position.

Furthermore, the Carrier claims that because Side Letter No. 5 does not include specific language, exempting the IGN and T&P properties from Article VII(b)(6), these properties must be subject to its provisions. The Carrier supports this argument by pointing to the inclusion of an exemption for the Kansas City Southern (KCS) property in Side Letter No. 5, as evidence that the absence of a similar exemption for the IGN and T&P properties implies their inclusion. This argument is fundamentally flawed.

Furthermore, the inclusion of Side Letter No. 5 in the 2022 National Agreement does not supersede the moratoriums in place on the IGN and T&P properties. The moratorium language explicitly prohibits unilateral modifications in any forum, <u>including those resulting from national negotiations</u>. The Carrier's reliance on Side

Letter No. 5 is a transparent attempt to sidestep the long-established protections afforded to these properties. The Carrier's reliance on Side Letter No. 5 to argue that Article VII(b)(6) applies to the IGN and T&P properties ignores the explicit protections already provided by the moratorium provisions in the governing CCAs. Unlike the KCS property, which required specific language in Side Letter No. 5 to create an exemption, the IGN and T&P properties are already protected by perpetual moratoriums. These moratoriums explicitly prohibit unilateral modifications to any provisions of the CCAs—including Extra Boards—without mutual consent.

As stated in Section 6 of the 1996 Crew Consist Agreement[31]:

> ***"Moratorium provisions currently in place pertaining to crew consist provisions will remain in full force and effect and will not be altered in any forum <u>including but not limited to National Negotiations and Boards established pertaining thereto</u>."***

This language could not be more clear and unambiguously "carves out" the IGN and T&P properties by requiring mutual consent for any modifications. The Carrier's attempt to impose changes under Article VII(b)(6) of the 2022 National Agreement is therefore invalid, as it directly violates the explicit terms of the moratoriums.

The Extra Boards and Supplemental Extra Boards on the IGN and T&P properties are not ancillary provisions but integral components of the respective CCAs. By their own admission, the Carrier acknowledges that the moratoriums apply to "specific provisions" of the CCAs. The Extra Boards and Supplemental Extra Boards are clearly included within these provisions and are therefore protected by the moratoriums.

[31] SMART TD Opening Submission Exhibits 68 & 69.

Any attempt to modify these provisions without mutual consent violates the governing CCAs and the perpetual moratoriums embedded within them. The Carrier's claim that Side Letter No. 5 somehow overrides these protections is without merit.

V. Carrier Omission of LaRocco and Bell Awards

The Organization finds it convenient that the Carrier fails to mention the LaRocco Award or the Bell Award in their arguments[32]. These awards were the direct result of the Carrier's own request to resolve the crew consist moratoria question "once and for all." Faced with the fact that the arbitration the Carrier forced on the Organization did not go its way, it now seeks to ignore the result.

The LaRocco Award settled the matter definitively, holding that the crew consist moratoriums on the IGN and T&P properties are indefinite and enforceable. The Carrier was fully aware that modifications to these agreements could only be made by mutual agreement and that the moratoriums would continue into perpetuity. The Bell Award further affirmed the Carrier's request for a comprehensive and final resolution of the moratoria dispute. It is disingenuous for the Carrier to now attempt to circumvent these rulings by proposing arbitration under Article VII of the 2022 National Agreement.

VI. Crew Consist Issues Must Be Handled Locally

Crew consist agreements are inherently tied to the unique operational and historical circumstances of specific properties, making them unsuitable for national handling. As recognized by PEB 219 Report, **Exhibit 16**, Page 83:

"....crew consist, as such, is not appropriately before this Board."

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[32] SMART TD Opening Submission Exhibits 70 & 71.

Similarly, PEB 250 addressed crew consist issues raised by the Carrier before it, stating, "there are significant questions about whether the Board has the authority to address Crew Consist process at all… [as] this matter is clearly one that, while of great importance, has time and time again been recognized to be a local issue under the RLA." PEB 250 at pg. 43[33]. Judicial and legislative precedents have consistently upheld that crew consist agreements are matters for local negotiation and resolution. This ensures that agreements account for property-specific considerations and operational realities.

VII. <u>The Importance of Respecting Moratoriums</u>

The moratorium provisions in the IGN and T&P agreements represent the cornerstone of stability and trust in labor-management relations. By agreeing to the moratoriums, the Carrier committed to honoring the agreed-upon terms and refraining from unilateral actions. These provisions serve as a critical safeguard, ensuring that settled issues remain settled and preventing ongoing disputes.

In their submission to PLB 7960 the Carrier specifically requested a final and binding resolution to these issues, seeking to ***"settle it once and for all."*** This is exactly what the LaRocco Award delivered: a comprehensive, permanent resolution affirming the moratorium protections and requiring mutual agreement for any changes on the IGN and T&P properties. Yet here we are, a mere three years later, with the Carrier attempting to undo what they know cannot be undone. This blatant disregard for the finality of the LaRocco Award and the moratorium protections undermines the principles of good faith bargaining and erodes the trust necessary for stable labor relations.

[33] SMART TD Opening Submission Exhibit 14

VIII. National Agreements Cannot Override Local Crew Consist Agreements

While it is generally true that national agreements can modify local agreements, this principle does not apply to the crew consist agreements on the IGN and T&P properties due to the explicit moratorium protections in place. The moratorium provisions are designed specifically to prevent unilateral changes to these agreements without mutual consent, regardless of broader national negotiations.

Moreover, the Presidential Emergency Board (PEB) process and court rulings have repeatedly affirmed that crew consist modifications are a local issue and must be negotiated on a property-by-property basis. Crew consist agreements are not suitable for national handling, as they involve specific operational and historical considerations unique to each property.

Furthermore, on page 73 of the Carrier's submission in the instant matter, the Carrier, in their discussion of national agreements modifying local agreements cites in footnote 86:

> ***"It is the black letter of the law that a new agreement will, absent specific terms to the contrary, modify and supersede any existing agreement covering the same properties and addressing the same related subjects."***

This argument reinforces the Organization's position. The moratoriums governing the IGN and T&P properties contain specific terms to the contrary that explicitly prohibit any unilateral changes or supersession by broader agreements.

As stated in Section 6 of the 1996 Crew Consist Agreement:

> ***"It is recognized that moratorium provisions currently in place pertaining to crew consist provisions will remain in full force and***

effect and will not be altered in any forum including but not limited to National Negotiations and Boards established pertaining thereto."

This language unambiguously serves as the ***"specific terms to the contrary"*** that the Carrier acknowledges would prevent a new agreement from overriding the existing moratorium protections.

The Carrier's own cited legal principle demonstrates that the moratoriums on the IGN and T&P properties not only remain intact but explicitly shield these agreements from the unilateral changes the Carrier is now attempting to impose.

IX. Quid Pro Quo Argument Is Misguided

The Carrier's claim that denial of Article VII changes should result in the loss of Article V benefits is baseless and nonsensical. Article V and Article VII are separate components of the 2022 National Agreement, and the benefits under Article V are not contingent upon modifications to Extra Boards and Supplemental Extra Boards protected by the moratoriums.

The Organization is not proposing that the Carrier is prohibited from implementing Article VII. Rather, we are specifically arguing that Article VII(b)(6), which addresses Extra Boards, cannot be imposed on the IGN and T&P properties due to the explicit protections in the 1993 and 1996 Crew Consist Agreements. These protections, upheld by the PLB 7960 LaRocco Award, prohibit unilateral modifications to Extra Boards and Supplemental Extra Boards on these properties without mutual agreement.

By attempting to condition Article V benefits on the implementation of Article VII(b)(6), the Carrier misrepresents the nature of these agreements and seeks to undermine the moratorium protections that have been explicitly preserved. The moratorium explicitly safeguards crew consist provisions, including Extra Boards and Supplemental Extra Boards, and these protections cannot be undermined by attempting to tie them to unrelated benefits under national agreements.

X. <u>Conclusion</u>

The Carrier's failure to respect the moratoriums constitutes a breach of good faith bargaining principles and undermines the foundational stability these provisions provide. Their reliance on **Side Letter No. 5**, whether from the 1996 or 2022 National Agreements, does not override the explicit protections in the 1993 and 1996 Crew Consist Agreements. Their omission of the LaRocco and Bell Awards, which definitively settled the moratoria issues, further undermines their arguments. Lastly, the Carrier's attempt to undo the resolution they sought in PLB 7960 is improper and demonstrates a fundamental lack of respect for the finality of arbitration and negotiated agreements.

The Organization respectfully requests that the Arbitration Board:

1. Uphold the moratorium protections established under the 1993 and 1996 Crew Consist Agreements.
2. Acknowledge the binding and final nature of the LaRocco and Bell Awards.
3. Deny the Carrier's attempt to impose unilateral changes to Extra Boards on the IGN and T&P properties under Article VII of the 2022 National Agreement.

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INDEX OF EXHIBITS

Exhibit	Description	Page
1	5.1 6.2 Calendar Comparison	12, 28
2	Time Off for Illness and Wellness Agreement	13, 15
3	Daily Preference Board Agreement	15, 16
4	5 Day Work Week Agreement	15
5	SMART TD Extra Board Covering Pool Vacancy Data	17
6	Vacancy Procedure Agreements	18
7	Supplemental Extra Board Agreements and Correspondence	24
8	BNSF Availability and Guarantee Data	27
9	Shipping Information and Maps	27
10	STB Trains Held Data	27
11	SMART TD Attendance Awards	29
12	Comparison of Time Pool Freight Employees Devote to Carrier	30
13	Pool Freight Regulation Agreements	31
14	Make-up Turn Data	31
15	Prior Work-Rest Agreement and Correspondence	33
16	PEB 219 Report and Request for Modification	43