UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA
OMAHA DIVISION

INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS, TRANSPORTATION DIVISION Petitioner, v. UNION PACIFIC RAILROAD COMPANY, Defendant.	Case No. 8:25-cv-00740

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, for the reasons more fully stated in the attached Memorandum of Law, Defendant Union Pacific Railroad Company moves for summary judgment on Plaintiff International Association of Sheet Metal, Air, Rail and Transportation Workers, Transportation Division's claims under the Railway Labor Act seeking to vacate in its entirety a final and binding arbitration award on the grounds that certain portions of it, according to Plaintiff, exceeded the arbitrator's jurisdiction. Plaintiff's arguments fail as a matter of law. The standard of review of arbitration awards is exceptionally deferential, and each challenged provision of the award was within the arbitrator's authority to award. Moreover, even if that were not so, Plaintiff waived its jurisdictional objections by failing to raise them during the arbitration proceedings themselves. For these and other reasons, Union Pacific is entitled to summary judgment.

Dated: August 11, 2026

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will serve all counsel of record.

s/ Thomas R. Chiavetta

UNITED STATES DISTRICT COURT
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INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS, TRANSPORTATION DIVISION Petitioner, v. UNION PACIFIC RAILROAD COMPANY, Defendant.	Case No. 8:25-cv-00740

DEFENDANT'S STATEMENT OF MATERIAL FACTS

In support of its Motion for Summary Judgment, Defendant Union Pacific Railroad Company hereby submits this Statement of Material Facts.

The Parties

1. Union Pacific Railroad Company ("Union Pacific") operates one of the largest freight rail networks in the United States, spanning more than 30,000 miles of track across 23 states. (Dkt. No. 24-10 (Day 1 Hearing Tr.) 42:5-12.) It is a "carrier" within the meaning of the Railway Labor Act, 45 U.S.C. § 151 First. (Dkt. No. 1 (Compl.) ¶ 6; Dkt. No. 10 (Answer) ¶ 6.)

2. The International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division ("SMART-TD") represents the trainpersons working for Union Pacific. (Dkt. No. 1 (Compl.) ¶ 4; Dkt. No. 10 (Answer) ¶ 4.) SMART-TD is a "representative" within the meaning of the Railway Labor Act, 45 U.S.C. § 151 Sixth. (Dkt. No 1 (Compl.) ¶ 4; Dkt. No. 10 (Answer) ¶ 4.)

Venue & Jurisdiction

3. SMART-TD brings this action pursuant to Section 9 Third of the Railway Labor Act, 45 U.S.C. § 159 Third, petitioning the Court to review and set aside an interest arbitration award. (Dkt. No. 1 (Compl.) ¶ 1; Dkt. No. 10 (Answer) ¶ 1.)

4. The parties agree that this Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 1337(a) over SMART-TD's claims insofar as this case presents federal questions arising under the Railway Labor Act. (Dkt. No. 1 (Compl.) ¶¶ 1-2; Dkt. No. 10 (Answer) ¶¶ 1-2.)

5. The Arbitration Award that SMART-TD asks this Court to vacate was filed in the U.S. District Court for the District of Nebraska of December 19, 2025. (Dkt. No. 1 (Compl.) ¶ 3; Dkt. No. 10 (Answer) ¶ 3.) The parties agree that venue is proper in this Court. (*See id.*; *see also* 45 U.S.C. § 159 Second).)

Train Operations

6. Trainpersons do not all hold the same job; some work in assigned service whereas others work in unassigned service. (*See* Dkt. No. 24-10 (Day 1 Hearing Tr.) 43:12-46:2.)

7. Employees in assigned service – such as those working yard or local jobs – have a set schedule; they have fixed reporting times and assigned days off. (Dkt. No. 24-10 (Day 1 Hearing Tr.) 44:20-45:3.)

8. Employees in unassigned service – such as those working in through-freight pools – do not have a set schedule; they work on-call. (*Id.* 45:6-46:11.)

9. Union Pacific primarily uses pools to staff trains operating between terminals (*i.e.*, through-freight service). (*Id.* 45:6-46:15.)

10. Employees assigned to a pool are listed in a particular order dictated by collective bargaining agreements and, as trains are ready to depart, they are called to work in that order. (*Id.* 48:20-50:25.)

11. After being called to work, the crew operates the train from the home terminal to an away-from-home terminal at which the crew typically ties-up, rests for at least 10 hours in accordance with federal law, and awaits a call to operate a train back to the home terminal. (*Id.* 48:20-50:25, 52:3-8.)

12. Employees assigned to pools are generally on-call 24/7, unless marked off or on rest. *See id.* 45:15-16 ("Our through freight crews are 24/7, 365. We are moving trains every single day of the week."), 46:8-11, 52:3-8.)

13. Trainpersons can mark off for various reasons, including vacation, personal leave, sick leave, and for personal business. (*See id.* 46:17-25.)

14. Mark-offs create vacancies that must be filled. (*See id.*)

15. Union Pacific maintains extra boards to help fill vacancies created when employees mark off. (*See id.* 46:20-47:2.)

16. Like employees assigned to a pool, employees assigned to an extra board are listed in a particular order and called to work in that order as vacancies arise. (*Id.* 49:16-21, 51:9-20.)

17. Extra boards protect vacancies in both assigned service – yard or local jobs with set schedules – and unassigned service. (*Id.* 46:20-25, 51:12-14.)

2020 National Bargaining Round and PEB 250

18. Collective bargaining in the railroad industry is governed by the Railway Labor Act and occurs between representatives of both parties. (Dkt. No. 1 (Compl.) ¶ 7; Dkt. No. 10 (Answer) ¶ 7.)

19. In addition to bargaining some agreements locally or at the system-wide level, the parties historically have bargained nationally over wages, benefits, and work rules. (Dkt. No. 1 (Compl.) ¶¶ 9-11; Dkt. No. 10 (Answer) ¶¶ 9-11.)

20. In late 2019, the National Carriers' Conference Committee—bargaining on behalf of Union Pacific and other major railroads—served a Section 6 notice on SMART-TD addressing wages, benefits, and work-rule changes, and SMART-TD served its own notice shortly thereafter. (Dkt. No. 24-7 at 94–105 (NCCC Section 6 Notice) & 106–117 (SMART-TD Section 6 Notice).)

21. The Carriers' work-rule proposals included establishing "self-supporting" pools; instituting an automated bidding system to award jobs; and changing the manner in which pools and extra boards are regulated. (*See, e.g.*, Dkt. No. 24-7 at 103-04 (NCCC Section 6 Notice to SMART-TD); Dkt. No. 24-7 at 118–28 (Oct. 1, 2020 Bargaining Proposal from NCCC to CBC); Dkt. No. 24-7 at 133–36 (July 11, 2022 Comprehensive Proposal from NCCC to Rail Labor Unions).)

22. The work rule changes sought by the Carriers were intended in part to improve efficiency and better satisfy customer demands in a modern age. (*See* Dkt. No. 24-7 at 103–04 (NCCC Section 6 Notice); Dkt. No. 24-7 at 133 & 135 (July 11, 2022 Comprehensive Proposal from NCCC to Rail Labor Unions).)

23. SMART-TD made various proposals of its own, including a proposal that employees in "unassigned road service" – such as those working in through-freight pools –

receive voluntary scheduled days off, the specifics of which would be determined through local negotiations. (*See* Dkt. No. 24-7 at 138 (Rail Unions' Joint Proposal Before PEB 250), BLET & SMART-TD Proposal 2.)

24. After extensive bargaining, followed by an unsuccessful mediation, the parties were unable to reach a voluntary agreement. (Dkt. No. 1 (Compl.) ¶¶ 17-19, 28; Dkt. No. 10 (Answer) ¶¶ 17-19, 28.)

25. As a result, to prevent the possibility of a national rail shutdown, President Biden appointed Presidential Emergency Board No. 250 to investigate and recommend a resolution. (Dkt. No. 1 (Compl.) ¶¶ 30-32; Dkt. No. 10 (Answer) ¶¶ 30-32.)

26. PEB 250 held five days of hearings and issued its report shortly thereafter. (Dkt. No. 1 (Compl.) ¶¶ 38-39; Dkt. No. 10 (Answer) ¶¶ 38-39.)

27. The Board sent the scheduling, assignment, and staffing issues back to the parties for further bargaining, recommending that, if the parties still could not agree, those issues be resolved through final and binding interest arbitration. (*See* Dkt. No. 24-1 (PEB 250 Report and Recommendations) at 35–36, 86–91.)

28. The Board expressed hope that this approach would produce a "win-win": carriers would get a more efficient staffing system, and employees would get more predictable schedules and greater control over their time off. (*See id.*)

29. That framework was ultimately incorporated into Articles V, VI, and VII of the 2022 National Agreement between SMART-TD and the major railroads. (Dkt. No. 24-2 (2022 National Agreement) at 8–13.)

30. Although the parties reached a tentative agreement, SMART-TD's membership did not ratify it. (Dkt. No. 1 (Compl.) ¶¶ 43-45; Dkt. No. 10 (Answer) ¶¶ 43-45.)

31. Congress then enacted Public Law No. 117-216, which imposed the 2022 Agreement's terms by statute. (Dkt. No. 1 (Compl.) ¶ 45; Dkt. No. 10 (Answer) ¶ 45; Dkt. No. 24-22 (PL 117-216).)

32. Article V of the 2022 National Agreement permits a General Committee seeking voluntary assigned days off in through-freight road service – including extra boards that protect through-freight road service – to serve written notice identifying proposed rules; the Carrier may respond with its own proposals. (Dkt. No. 24-2 (2022 National Agreement) at 8.)

33. Under Article V, if the parties cannot reach agreement within 180 days, either party may submit the matter to final and binding interest arbitration, and the arbitration board has jurisdiction to determine "whether and how the rules referenced in this Article will be implemented." (*Id.*)

34. Article VI of the 2022 National Agreement addresses automated bid scheduling—the process by which employees submit preferences and are assigned to positions through a standing-bid process based on seniority, qualifications, and other rules. (*Id.* at 9–11.)

35. Under Article VI, if the parties cannot reach agreement within 180 days, either party may submit the matter to final and binding interest arbitration, and the arbitration board has jurisdiction to determine "whether and how the rules referenced in this Article will be implemented." (*Id.* at 9.)

36. Article VII of the 2022 National Agreement, which addresses pools and extra boards, provides for self-supporting pools,[1] replaces mileage-based pool regulation with start-

[1] A self-supporting pool is one in which vacancies within the pool are filled in the first instance by the next available, rested employee in the pool – to the extent anyone fits that criteria – rather than by someone on the extra board. (Dkt. No. 24-7 (Day 1 Hearing Tr.) 63:6-23.)

based regulation, and gives the Carrier authority to establish, abolish, or combine extra boards based on service needs. (*Id.* at 11–13; *see also* Dkt. No. 24-7 (Day 1 Hearing Tr.) 89:22-92:17.)

37. Article VII also provides that, in conjunction with the adoption of self-supporting pools and/or changes to the way in which pools and extra boards are regulated, new agreements will provide for one or more of the "[w]orkforce predictability and flexibility" measures described in Article VII: (a) the "[o]pportunity for employees to observe rest outside the requirements of the Rail Safety Improvement Act"; (b) "[a] procedure under which employees may trade assignments"; and/or (c) "[a] procedure under which employees may receive a pre-arranged lay-off." (Dkt. No. 24-2 (2022 National Agreement) at 12.)

38. Under Article VII, if the parties cannot reach agreement within 180 days, either party may submit the matter to final and binding interest arbitration, and the arbitration board has jurisdiction to determine "whether and how the rules referenced in this Article will be implemented." (*Id.* at 12.)

Negotiation and Arbitration Proceedings

39. Following Congress's enactment of Public Law No. 117-216, imposing by law the terms of the parties' tentative agreement, the parties commenced the negotiations the statute contemplated. (*See* Dkt. No. 1 (Compl.) ¶¶ 54-56; Dkt. No. 10 (Answer) ¶¶ 54-56.)

40. SMART-TD served its notice seeking voluntary assigned days off; Union Pacific served its notices seeking automated bid scheduling and the new pool-and-extra-board framework. (Dkt. No. 24-3 (SMART-TD Art. V Notice to Union Pacific); Dkt. No. 24-4 (Union Pacific Art. VI & Art. VII Notice).)

41. The parties negotiated, but did not reach agreement. (Dkt. No. 1 (Compl.) ¶¶ 56-57; Dkt. No. 10 (Answer) ¶¶ 56-57.)

42. In July 2024, SMART-TD invoked arbitration under Articles V, VI, and VII (Dkt. No. 24-6 at 118 (July 25, 2024 Request for Arbitration)), and a few months later the parties signed a written Agreement to Arbitrate establishing Special Board of Adjustment No. 1208 under Sections 7 and 8 of the RLA. (Dkt. No. 24-5 (Sept. 16, 2024 Arbitration Agreement).)

43. The Board consisted of three members: Maqui Parkerson (Carrier Member), Gary Crest (Union Member and SMART-TD Vice President), and Earlene R. Baggett-Hayes (Neutral Arbitrator and Board Chair). (*See id.*; Dkt. No. 1 (Compl.) ¶ 59; Dkt. No. 10 (Answer) ¶ 59.)

44. The Agreement to Arbitrate limited the Board to "changes necessary to implement the rules referenced in Articles V, VI and VII of the National Agreement," and the National Agreement granted the Board "jurisdiction to determine whether and how the rules referenced in [those Articles] will be implemented." (Dkt. No. 24-5 (Sept. 16, 2024 Arbitration Agreement); Dkt. No. 24-2 (2022 National Agreement) at 8, 9, 11.)

45. The parties fully briefed the case and participated in a three-day evidentiary hearing in January 2025. (Dkt. No. 24-16 (Arbitration Award) at 2–3; Dkt. No. 24-7 (Carrier's Opening Submission); Dkt. No. 24-6 (SMART-TD's Opening Submission); Dkt. No. 24-9 (Carrier's Reply Submission); Dkt. No. 24-8 (SMART-TD's Reply Submission).)

46. Two months later, the Neutral issued a Preliminary Order addressing the Board's jurisdiction. (Dkt. No. 24-13 (Mar. 17, 2025 Preliminary Findings and Order).)

47. The Preliminary Order excluded several SMART-TD proposals—such as additional pay, leave, and allowances—as outside the Board's authority, identified three categories within scope (scheduled rest, self-supporting pools, and prearranged layoffs), and directed the parties to submit best-and-final proposals limited to topics and issues already presented. (*Id.*)

48. In May 2025, both parties submitted best-and-final proposals accompanied by post-hearing briefs. (Dkt. No. 24-15 (Carrier's Post-Hearing Submission); Dkt. No. 24-14 (SMART-TD's Post-Hearing Submission).)

49. SMART-TD's proposal included a 6/3 work/rest schedule for pools (meaning that employees would work or be available for 6 days before then having 3 days off) and a 5/2 work/rest schedule for road extra boards (meaning that employees would work or be available for 5 days before then having 2 days off). (Dkt. No. 24-14 (Union's Post-Hearing Submission) at 29 (Art. V.A & Art. V.D).)

50. Union Pacific's proposal included a 4/1 work/rest schedule for pools and "voluntary smart rest" for road extra boards. (Dkt. No. 24-15 (Carrier's Post-Hearing Submission) at 18 (Art. V.A.A. & Art. V.B.1); *see also id.* at 4–7 (explaining voluntary rest proposals).)

51. Federal law requires employees who make six consecutive starts to rest for 48 hours. (49 U.S.C. § 21103(a)(4)(A).)

52. Smart rest allows an employee, after working 5 consecutive starts, to take 24 hours of rest upon tie-up after the fifth start if the employee so chooses. (*See* Dkt. No. 24-15 (Carrier's Post-Hearing Submission) at 18 (Art. V.B.1); *see also id.* at 5–7 (explaining voluntary smart rest proposal).)

53. Union Pacific's proposal included substantially more time off for employees – voluntary rest days for those in through-freight service and a doubling of the percentage of employees allowed to take pre-arranged lay-offs on any given day. (*See id.* at 18 (Art. V.A.A, Art. V.B.1) & 24 (Art. VII.D.1); *see also id.* at 4–7 (explaining voluntary rest proposals), 15–16 (explaining proposal to increase percentage of pre-arranged layoffs allowable).)

54. To ensure that these measures did not adversely affect customer service, Union Pacific also proposed that, in certain limited circumstances, any "qualified employee" could be used to perform service. ((*Id.* at 25 (Art. VII.E); *see also id.* at 16 (explaining rationale for "qualified employee" provision).)

55. Rules in place in some locations on Union Pacific's system allowed employees to take "extra rest" under some circumstances. (Dkt. No. 24-6 at 119 (Extra Rest Rule); Dkt. No. 24-12 (Hearing Tr. Day 3) 36:1-4.)

56. In its best-and-final proposal, Union Pacific proposed that "[a]ny existing pools or extra boards that have existing fatigue mitigation programs and/or provisions in place providing for extending, additional, or extra rest . . . will be eliminated." (Dkt. No. 24-15 (Carrier's Post-Hearing Submission) at 19 (Art. V.D).)

57. In its opening submission, SMART-TD argued that "[e]liminating any extra rest provisions currently in place would have a tremendously negative impact on employee's quality of life." (Dkt. No. 24-6 (Union's Opening Submission) at 25.)

58. Prior to its best-and-final proposal, Union Pacific had made proposals on how to integrate the new rest rules with pre-existing ones. (*See, e.g.*, Dkt. No. 24-7 at 86 (Carrier's Proposed Agreement Terms), Art. V.A.1, Note 3 (calling for elimination of "turn rest" provisions); *see also* Dkt. No. 24-12 (Day 3 Hearing Tr.) 37:5-38:8.)

The Award and Clarification

59. In August 2025, the Board issued its Award. (Dkt. No. 24-16 (Arbitration Award).)

60. The majority opinion, authored by the Neutral, addressed each Article in turn—identifying the disputed issues, summarizing the parties' positions, and explaining the Board's resolution. (*Id.*)

61. The Union dissented to the Award. (Dkt. No. 24-17.)

62. With respect to Article V, the Award adopted a 6/2 work/rest schedule for pool freight boards: six days worked (or available), followed by two voluntary rest days. (Dkt. No. 24-16 (Arbitration Award) at 5, 11 (Art. V.A.A.).)

63. The Board rejected the Carrier's proposed 4/1 model on the ground that 6/2 "better supports the objective of providing a better quality of life for employees." (*Id.* at 5.)

64. Under Article V, the Award also adopted "Smart Rest" for road and combination extra boards, providing that an employee "may activate voluntary undisturbed rest (24 total hours between consecutive trips) upon tie up to break consecutive RSIA starts[2] at their home terminal after working five (5) consecutive trips/tours of duty." (*Id.* at 5–6, 11 (Art. V.B.1.); *see also* Dkt. No. 24-10 (Day 1 Hearing Tr.) 174:3-16.)

65. The Board explained that Smart Rest was adopted "[i]n order to balance additional costs associated with a 6/2 work-rest model," and that Smart Rest, in the Board's view, "is consistent with the workability and quid pro quo mandates of the Board." (Dkt. No. 24-16 (Arb. Award) at 5.)

66. Employees who are not working five consecutive starts are, by definition, getting at least 24 hours off at some point between starts. (*See* Dkt. No. 24-15 (Carrier's Post-Hearing Submission) at 6 n.3.)

[2] A "start" refers to when an employee is called to work. *See* Ex. __ (Hearing Tr.) 92:15-17.

67. While mandating new voluntary rest days, the Award eliminated certain pre-existing rest provisions: "turn rest" and "extra rest." (Dkt. No. 24-16 (Arb. Award) at 12 (Art. V.D.).)

68. Under Article VI, the Award implemented a system-wide "standing bid" framework based on seniority, qualifications, and job preferences. (*Id.* at 6–7.)

69. The Award adopted uniform assignment and displacement procedures, eliminated inconsistent legacy rules, rejected portions of the Carrier's vacancy procedures, modified the furlough-recall provision, and harmonized bid procedures across the system. (*See id.*)

70. Under Article VII, the Award implemented self-supporting pools and authorized the Carrier to establish, abolish, or combine extra boards based on service needs. (*Id.* at 7–9.)

71. The Award also implemented the start-based pool regulation framework contemplated by Article VII. (*Id.* at 7–9.)

72. In addition to granting voluntary rest days, the Award doubled the pre-arranged lay-off threshold – the percentage of employees at each location who could be off on vacation or personal leave at any given time. (*See id.* at 9 & Art. VII.D.1.)

73. The Award states that, "In order to protect the Carrier's ability to provide service, the final Award adopts the Carrier's proposed language that allows it to protect service by using any qualified employee in limited circumstances that could result in unavoidable harm to the customer." (*See id.* at 9.)

74. The provisions referenced by the Board states:

> Without prejudice to either party's position regarding the ability of the Carrier to take appropriate actions to protect service during periods of extraordinary unavailability, if the Carrier is unable to fill an assignment due to lack of rested and available personnel and the blanking of such assignment would result in unavoidable harm to the customer, a qualified employee may be used without penalty to perform such service upon providing notice to the General Chairperson.

> The Carrier will evaluate the need to exercise its rights under this provision on an assignment-by-assignment basis.
>
> (*Id.* at 17 (Art. VII.E).)

75. The Board retained jurisdiction for sixty days to permit clarification. (*Id.* at 10.)

76. During that window, the parties submitted three interpretation questions, and in September 2025 the Neutral issued written responses. (Dkt. No. 24-18 (Board's Responses to Interpretation Questions).)

77. Those questions and answers included the following (*id.*):

> **Q1.** Does Article V.D eliminate extra rest provisions on pools and extra boards on the Eastern District?
>
> Answer: Yes.
>
> . . .
>
> **Q3.** What is the definition of "a qualified employee" in Article VII.E?
>
> Answer: A qualified employee is any employee who meets the requirements of the job, whether it is the skills level, certification(s), training, and/or experience. Note regarding Question #3: The Award does not differentiate between Union and non-Union employees in Article VII.E when it refers to "a qualified employee." It is anticipated that through the implementation phase and the Questions and Answers, the parties will discuss and agree upon terms consistent with the specific conditions set out in Article VII.E of the Award.

78. SMART-TD objected to the "qualified employee" provision during the arbitration proceedings, but not on jurisdictional grounds. (Dkt. No. 24-11 (Day 2 Hearing Tr.) 35:22-36:21.)

79. SMART-TD objected to Union Pacific's "Smart Rest" proposal during the arbitration proceedings, but not on jurisdictional grounds. (Dkt. No. 24-8 (Union's Reply Submission) at 14, 27–29.)

80. During the arbitration proceedings, SMART-TD argued that the Board should not eliminate extra rest provisions, but never challenged the Board's authority to do so. (Dkt. No. 24-7 (Union's Opening Submission) at 25, 59–60.)

Dated: August 11, 2026

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will serve all counsel of record.

s/ Thomas R. Chiavetta

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA
OMAHA DIVISION

INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS, TRANSPORTATION DIVISION Petitioner, v. UNION PACIFIC RAILROAD COMPANY, Defendant.	Case No. 8:25-cv-00740

DEFENDANT'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

This case arises from an interest arbitration between Defendant Union Pacific Railroad Company and Petitioner SMART Transportation Division ("SMART-TD"), the labor union representing Union Pacific conductors and other train-service employees. For years, the parties bargained over how to schedule, rest, assign, and staff those employees. They eventually reached a Tentative Agreement which failed ratification but was then imposed by law. In Articles V, VI, and VII, that Agreement set the ground rules for these scheduling, rest, and staffing issues and provided that, if the parties still could not agree on whether or how to implement them, either side could submit the open issues to final and binding interest arbitration, meaning, in essence, that a board of arbitration would be empowered to write the missing terms for the parties. The parties could not agree, so they invoked that process. The resulting Award is a compromise – the railroad got some of what it wanted, and the union got some of what it was seeking as well. Neither side prevailed.

SMART-TD is now asking this Court to vacate the Award in its entirety because of specific portions of the Award that it does not like. Unsurprisingly, the law does not favor such efforts to undo final and binding interest arbitration. Judicial review under Section 9 Third of the Railway Labor Act is "among the narrowest known in the law." *Maine Cent. R.R. Co. v. Bhd. of Maint. of Way Emps.*, 873 F.2d 425, 428 (1st Cir. 1989). An award may be vacated on only three grounds, and SMART-TD invokes just one: that the Award fails to "conform" or "confine itself" to the parties' agreement to arbitrate. 45 U.S.C. § 159 Third(b). The Court's task, therefore, is not to decide whether the Board reached the best result—or even the correct one—but solely whether it acted within its authority.

In this case, the Board was tasked with deciding "whether and how" to implement a complex, interdependent set of rules governing scheduling, assignments, staffing, and rest—an assignment that necessarily conferred substantial discretion. The Board was required not only to decide *whether* particular rules should be adopted, but also to determine *how* those rules would operate together as a coherent system, *how* they would function in practice, and *how* to balance competing railroad and employee interests. Each of the three provisions under attack reflects exactly that kind of exercise, addressing how to implement Articles V, VI, and VII.

First, SMART-TD challenges Article VII(E), the "qualified employee" provision, asserting it conflicts with other agreements. But Article VII(E) addresses details about "how" to implement rules allowing for employee rest, *i.e.*, what happens when no rested, available employee can fill an assignment. That is a matter well within the Board's jurisdiction because it is an implementation choice concerning one of the subjects under Articles V, VI, and VII. SMART-TD's concern about possible future conflicts goes to the Award's substance—not the Board's power to issue it. Indeed, questions about how to reconcile Article VII(E) with other agreements will be a matter of interpretation or application—not the Board's authority to adopt it in the first place.

Second, SMART-TD challenges the Board's use of "Smart Rest" for extra-board employees. But Article V required the Board to determine whether and how rest would be implemented for extra boards; it did not dictate the specific model the Board had to adopt. The Board selected an approach tailored to the extra board's role of protecting vacancies, irregular service, and other unpredictable staffing needs. SMART-TD may prefer a different model, but choosing among competing implementation options was precisely the task the parties (and Congress) assigned to the Board.

Third, SMART-TD argues that the Board lacked authority to eliminate preexisting extra-rest provisions because Union Pacific raised that issue in its best-and-final offer. But the scope of the Board's authority was defined by the governing agreements, not by the contents of any particular proposal. Once charged with deciding "whether and how" the new rest regime would operate, the Board necessarily had to determine how that regime would interact with existing rest rules. The Board concluded that the old provisions should not coexist with the new integrated system it was tasked with creating. SMART-TD's disagreement with that conclusion is not a valid jurisdictional challenge.

Finally, all three Counts fail for another, independent reason: waiver. Throughout the arbitration, SMART-TD treated these issues as matters properly before the Board. It never argued that the Board lacked authority to decide them (and in fact asked the Board to address a wide array of other topics as well). Only after receiving an unfavorable Award did SMART-TD recast its objections as jurisdictional. The law does not permit that maneuver. A party may not submit an issue to arbitration, seek a favorable ruling, and then, after losing, challenge the arbitrator's authority to decide the very issue it asked the arbitrator to resolve. Because SMART-TD failed to raise these jurisdictional objections before the Board, it waived them.

BACKGROUND

I. The Parties and Railroad Operations.

Union Pacific operates one of the largest freight rail networks in the United States, spanning more than 30,000 miles of track across 23 states and running hundreds of trains around the clock, year-round. (Statement of Material Facts ("SMF") ¶¶ 1, 9.) SMART-TD represents the employees who help keep those trains moving—conductors and other trainpersons who perform road, yard, and local service across Union Pacific's system. (*Id.* ¶¶ 2–5.)

Not all trainpersons hold the same assignment. (*Id.* ¶ 3.) Some work in assigned service and others work in unassigned service. (*Id.*) Assigned service includes yard and local jobs. (*Id.* ¶ 4.) Trainpersons assigned to yard jobs work within a rail yard, switching and classifying freight cars to assemble outbound trains. (Dkt. No. 24-10 (Day 1 Hearing Tr.) 43:12-21.) Local jobs involve delivering and/or picking up freight cars from local customers. (*Id.* 44:6-10.) Employees in assigned service have set schedules; they have fixed reporting times and assigned days off. (SMF ¶ 4.)

Employees in unassigned service do not have a set schedule; they work on-call. (*Id.* ¶ 5.) Unassigned service includes positions on through-freight pools and extra boards. (*Id.* ¶¶ 5, 13.) Union Pacific uses pools to staff trains operating between terminals (*i.e.*, through-freight service). (*Id.* ¶ 6.) Employees assigned to a pool are listed in a particular order dictated by collective bargaining agreements and, as trains are ready to depart, they are called to work in that order. (*Id.* ¶ 7.) The employee then operates a train from their home terminal to an away-from-home terminal at which the employee typically ties-up, rests for at least 10 hours in accordance with federal law, and awaits a call to operate a train back to the home terminal. (*Id.* ¶ 8.) Employees assigned to pools are generally on-call 24/7, unless marked off or on rest. (*Id.* ¶ 9.)

Trainpersons can mark off for various reasons, including vacation, personal leave, sick leave, and for personal business. (*Id.* ¶ 10.) Doing so creates a vacancy that must be filled. (*Id.* ¶ 11.) Union Pacific maintains extra boards to help fill these vacancies. (*Id.* ¶ 12.) Like employees assigned to a pool, employees assigned to an extra board are listed in a particular order and called to work in that order as vacancies arise. (*Id.* ¶ 13.) Extra boards protect vacancies in both assigned service – yard or local jobs with set schedules – and unassigned service. (*Id.* ¶ 14.)

II. 2020 National Bargaining Round and PEB 250.

Collective bargaining in the railroad industry is governed by the Railway Labor Act. (*Id.* ¶ 15.) In addition to bargaining some agreements locally or at the system-wide level, the parties historically have bargained nationally over wages, benefits, and work rules. (*Id.* ¶ 16.) This bargaining occurs between representatives for both parties. (*Id.* ¶ 15.)

In 2019, the National Carriers' Conference Committee – bargaining on behalf of Union Pacific and other major railroads – and SMART-TD exchanged Section 6 notices addressing wages, benefits, and work-rule changes, kicking off a new round of negotiations. (*Id.* ¶ 17.) The Carriers' work-rule proposals included establishing "self-supporting" pools; instituting an automated bidding system to award jobs; and changing the manner in which pools and extra boards are regulated. (*Id.* ¶ 18.) These changes, described in more detail below, were intended in part to improve efficiency and better satisfy customer demands in a modern age. (*Id.* ¶ 19.)

Self-Supporting Pools. Historically, when vacancies arose in pools, the extra board was the first source for filling them. (Dkt. No. 24-10 (Day 1 Hearing Tr.) 51:9-20.) In a self-supporting pool, however, the pool itself is the primary source for filling those vacancies. (*Id.* 62:21-63:23.) When someone in a pool marks off, rather than immediately turning to the extra board to fill that vacancy, the Carrier first attempts to fill it by calling the next rested and available trainperson in the pool. (*Id.*) The carrier calls someone from the extra board only if nobody in the pool is available to fill the vacancy. (*Id.* 64:18-65:7.)

Automated Bid Scheduling. Collective bargaining agreements dictate the manner in which employees are assigned to jobs. (*See, e.g.*, *id.* 133:4-21.) Rules afford employees the right under certain circumstances to move from one assignment to another and dictate the manner in which jobs are assigned. (*Id.* 133:4-21, 141:13-142:12.) While these rules vary from carrier to carrier – and even from one part of a carrier's system to another – the Carriers generally proposed an automated bid scheduling system that would streamline the job bidding and assignment process. (*See, e.g.*, Dkt. No. 24-7 at 123–24 (Oct. 1, 2020 Bargaining Proposal); Dkt. No. 24-7 at 133–34 (July 11, 2022 Proposal), Attachment B (Automated Bid Scheduling).)

Pool and Extra Board Regulation. Each employee in a pool holds a "turn," and the number of "turns" in each pool—and by extension the number of employees in each pool—varies from one pool to another. (*See* Dkt. No. 24-10 (Day 1 Hearing Tr.) 49:8-15.) Pool regulation refers to the process by which the number of turns in a pool is adjusted to ensure that pools are staffed appropriately and that employees in the pool have adequate earnings opportunities. (*Id.* 89:22-90:14.) Historically, pools were regulated by mileage, using a historical look-back period to predict future needs. (*Id.* 90:15-91:25.) The Carriers proposed regulating pools by starts (*i.e.*, the number of times each person in the pool is called to work), taking into account not only past demand but also future needs as affected by known variables. (*See id.* 92:25-94:25; Dkt. No. 24-7 at 135–36 (July 11, 2022 Proposal), Attachment C (Section B – Pool and extra board regulation).) The Carriers also proposed that they be given the right to abolish or establish road, yard, or combination extra boards, and to regulate those boards—*i.e.*, determine the number of employees assigned to them—based on the needs of service. (*See* Dkt. No. 24-7 at 135 (July 11, 2022 Proposal), Attachment C (Section B.vi).)

Contrary to the Carriers' proposals, the Unions' proposals generally sought more pay for less work. (*See, e.g.*, Dkt. No. 24-7 at 137–40 (Rail Unions' Joint Proposal to PEB 250).) These requests included proposals for paid sick leave and additional holidays. (*Id.* at 137.) In addition, SMART-TD proposed that employees in "unassigned road service" – such as those working in through-freight pools – receive voluntary scheduled days off, the specifics of which would be determined through local negotiations. (SMF ¶ 20.)

After years of bargaining, followed by an unsuccessful mediation, the parties were unable to reach a voluntary agreement. (*Id.* ¶ 21.) As a result, to prevent the possibility of a national rail shutdown, President Biden appointed Presidential Emergency Board No. 250 to investigate and recommend a resolution. (*Id.* ¶ 22.)

PEB 250 held five days of hearings and issued its report shortly thereafter. (*Id.* ¶ 23.) On the work-rule dispute, however, the Board did not prescribe specific rules. (*See id.* ¶ 24.) Instead, it sent the scheduling, assignment, and staffing issues back to the parties for further bargaining—recommending that, if the parties still could not agree, those issues be resolved through final and binding interest arbitration. (*Id.*) The Board expressed hope that this approach would produce a "win-win": carriers would get a more efficient staffing system, and employees would get more predictable schedules and greater control over their time off. (*Id.* ¶ 25.)

That framework was ultimately incorporated into Articles V, VI, and VII of the 2022 National Agreement between SMART-TD and the major railroads. (*Id.* ¶ 26.) Although the parties reached a tentative agreement, SMART-TD's membership did not ratify it. (*Id.* ¶ 27.) Congress then enacted Public Law No. 117-216, which imposed the agreement's terms by statute. (*Id.* ¶ 28.) As a result, Articles V, VI, and VII carry the force of law. Each article addresses a distinct aspect of employee scheduling.

Article V addresses scheduled days off. (*Id.* ¶ 29.) It permits a General Committee seeking voluntary assigned days off in through-freight road service – including extra boards that protect through-freight road service – to serve written notice identifying proposed rules; the Carrier may respond with its own proposals. (*Id.*) If the parties cannot reach agreement within 180 days, either party may submit the matter to final and binding interest arbitration, and the arbitration board has jurisdiction to determine "whether and how the rules referenced in this Article will be implemented." (*Id.* ¶ 30.)

Article VI addresses automated bid scheduling—the process by which employees submit preferences and are assigned to positions through a standing-bid process based on seniority, qualifications, and other rules. (*Id.* ¶ 30.) Like Article V, it provides for final and binding interest arbitration to determine "whether and how" those rules will be implemented if the parties cannot agree. (*Id.* ¶ 32.)

Article VII addresses pools and extra boards. (*Id.* ¶ 33.) It provides for self-supporting pools, replaces mileage-based pool regulation with start-based regulation, and gives the Carrier authority to establish, abolish, or combine extra boards based on service needs. (*Id.*) It also links that operational framework to workforce-predictability measures—including rest outside RSIA requirements, trip-trade procedures, and prearranged layoffs—that are designed to balance flexibility with quality of life. (*Id.* ¶ 34.) And like Articles V and VI, Article VII provides for final and binding interest arbitration if the parties cannot agree. (*Id.* ¶ 35.)

Together, these three Articles created the process that led to this case: the parties were to bargain over implementing the new rules, and if bargaining failed, a neutral arbitration board would decide "whether and how" those rules would be implemented.

III. Negotiation and Arbitration Proceedings.

Following Congress's enactment of Public Law No. 117-216, the parties commenced the negotiations the statute contemplated. (*Id.* ¶ 36.) SMART-TD served its notice seeking voluntary assigned days off; Union Pacific served its notices seeking automated bid scheduling and the new pool-and-extra-board framework. (*Id.* ¶ 37.) The parties negotiated but did not reach agreement. (*Id.* ¶ 38.)

In July 2024, SMART-TD invoked arbitration under Articles V, VI, and VII, and a few months later the parties signed a written Agreement to Arbitrate establishing Special Board of Adjustment No. 1208 under Sections 7 and 8 of the RLA. (*Id.* ¶ 39.) The Board consisted of three members: Maqui Parkerson (Carrier Member), Gary Crest (Union Member and SMART-TD Vice President), and Earlene R. Baggett-Hayes (Neutral Arbitrator and Board Chair). (*Id.* ¶ 40.) The Arbitration Agreement limited the Board to "changes necessary to implement the rules referenced in Articles V, VI and VII of the National Agreement," and the National Agreement granted the Board "jurisdiction to determine whether and how the rules referenced in [those Articles] will be implemented." (*Id.* ¶ 41.)

The parties fully briefed the case and participated in a three-day evidentiary hearing in January 2025. (*Id.* ¶ 42.) Two months later, the Neutral issued a Preliminary Order addressing the Board's jurisdiction. (*Id.* ¶ 43.) The Order excluded several SMART-TD proposals—such as additional pay, leave, and allowances—as outside the Board's authority, identified three categories within scope (scheduled rest, self-supporting pools, and prearranged layoffs), and directed the parties to submit best-and-final proposals limited to "parameters or topics already presented and argued." (*Id.* ¶ 44; *see also* Dkt. No. 24-13 (Mar. 17, 2025 Preliminary Findings and Order) at 2, ¶ 3.)

In May 2025, both parties submitted best-and-final proposals accompanied by post-hearing briefs. (SMF ¶ 45.) SMART-TD's proposal included a 6/3 work/rest schedule for pools (meaning that employees would work or be available for 6 days before then having 3 days off) and a 5/2 work/rest schedule for road extra boards (meaning that employees would work or be available for 5 days before then having 2 days off). (*Id.* ¶ 46.) Union Pacific's proposal included a 4/1 work/rest schedule for pools and "voluntary smart rest" for road extra boards. (*Id.* ¶ 47.) Federal law requires employees who make six consecutive starts[1] to rest for 48 hours. (*Id.* ¶ 48.) Smart rest allows an employee, after working 5 consecutive starts, to take 24 hours of rest upon tie-up after the fifth start if the employee so chooses. (*Id.* ¶ 49.)

Union Pacific's proposal included substantially more time off for employees – voluntary rest days for those in through-freight service and a doubling of the percentage of employees allowed to take pre-arranged lay-offs on any given day. (*Id.* ¶ 50.) Accordingly, to ensure that these measures did not adversely affect customer service, Union Pacific also proposed that, in certain limited circumstances, any "qualified employee" could be used to perform service. (*Id.* ¶ 51.)

Moreover, in light of the new rest days under either side's proposal, Union Pacific proposed that "[a]ny existing pools or extra boards that have existing fatigue mitigation programs and/or provisions in place providing for extending, additional, or extra rest . . . will be eliminated." (*Id.* ¶ 53.) This provision addressed provisions in place in some locations allowing employees to take "extra rest" under some circumstances. (*See id.* ¶ 52; *see also, e.g.*, Dkt. No. 24-6 at 119 ((Extra Rest Rule) (allowing conductors in Union Pacific's Eastern District to take up to 24 hours of rest – 14 hours more than they would otherwise be afforded – provided they request it upon tie-up (*i.e.*, when they go off-duty).) Although Union Pacific proposed eliminating extra rest in its best-and-final submission, the subject was not new to the proceeding—SMART-TD had already addressed it in its opening submission, arguing that "[e]liminating any extra rest provisions currently in place would have a tremendously negative impact on an employee's quality of life." (*Id.* ¶ 54.) In

[1] "Consecutive starts" is defined as a single or continuous trip/tour of duty under the Federal Railroad Administration's interpretation of the Hours of Service Laws, as modified by the 2008 Rail Safety Improvement Act (RSIA). *See* Dkt. No. 24-16 (Arbitration Award) at 11–12 (Art. V.B.1.a). 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. *Id.* The time encompassed in normal layover/rest time between trips, as well as layoffs (compensated and/or uncompensated) or any other time off totaling twenty-four (24) hours or more in the aggregate will serve to reset the consecutive trip counter. *Id.*

addition, Union Pacific had previously made proposals on how to integrate the new rest rules with pre-existing ones. (*Id.* ¶ 55; *see also, e.g.*, Dkt. No. 24-7 at 86 (Union Pacific's Initial Proposal), Art. V.A.1, Note 3 (proposing to eliminate "[a]ny agreement provisions providing for 'turn rest'"[2] in light of the new rest days afforded by Article V).)

IV. The Award and Clarification.

In August 2025, the Board issued its Award. (SMF ¶ 56.) The majority opinion, authored by the Neutral, addressed each Article in turn—identifying the disputed issues, summarizing the parties' positions, and explaining the Board's resolution. (*Id.* ¶ 57.) The Union Member dissented. (*Id.* ¶ 58.)

Article V—Scheduled Days Off. Under Article V, the Award implemented two principal components. *First*, the Award adopted a 6/2 work/rest schedule for pool freight boards: six days worked (or available), followed by two voluntary rest days. (*Id.* ¶ 59.) The Board rejected the Carrier's proposed 4/1 model on the ground that 6/2 "better supports the objective of providing a better quality of life for employees." (*Id.* ¶ 60.) As part of this integrated framework, the Award eliminated existing "turn rest" provisions under Article V(A) and extra rest provisions under Article V(D). (*Id.* ¶ 64.)

Second, the Award adopted "Smart Rest" for road and combination extra boards, providing that an employee "may activate voluntary undisturbed rest (24 total hours between consecutive trips) upon tie up to break consecutive RSIA starts at their home terminal after working five (5)

[2] Each employee in a pool holds a "turn." (Dkt. No. 24-10 (Day 1 Hearing Tr.) 49:8-15.) Before self-supporting pools, when an employee in a pool marked off, someone from the extra board was called to take their turn. (*Id.*51:9-20.) That person would then make a round-trip journey from the home terminal to the away-from-home terminal and back, after which they would go back to the extra board. (*Id.*) At that point, upon marking back up, the pool employee is placed back on their turn. (*Id.* 52:9-53:8.) Nevertheless, even though that employee is rested and available, rules in some locations providing for "turn rest" require that the "turn" itself be afforded 10 hours of rest upon tie-up at the home terminal. (Dkt. No. 24-12 (Day 3 Hearing Tr.) 37:7-24.) The practical effect of this rule is to afford employees additional rest beyond that which is required by federal law (and which the employee might not necessarily need or want).

consecutive trips/tours of duty." (*Id.* ¶ 61.) The Board explained that Smart Rest was selected as part of the cost-balancing required after adopting the more rest-favorable 6/2 model for pools, and to "address[ ] the Organization's desire for voluntary rest days" in a workable fashion. (*Id.* ¶ 62.)

Article VI—Automated Bid Scheduling. Under Article VI, the Award implemented a system-wide "standing bid" framework based on seniority, qualifications, and job preferences. (*Id.* ¶ 65.) The Award adopted uniform assignment and displacement procedures, eliminated inconsistent legacy rules, rejected portions of the Carrier's vacancy procedures, modified the furlough-recall provision, and harmonized bid procedures across the system. (*Id.* ¶ 66.)

Article VII—Pools and Extra Boards. Under Article VII, the Award implemented self-supporting pools and confirmed the Carrier's authority to establish, abolish, or combine extra boards based on service needs. (*Id.* ¶ 67.) It also implemented the start-based pool regulation framework Article VII requires, replacing legacy mileage-based regulation, and harmonized that framework with the Carrier's authority to regulate non-guaranteed pools to cover only rest days actually observed. (*Id.* ¶ 68.)

Most relevant here, the Award adopted Article VII(E)—the "any qualified employee" service-protection provision:

> Without prejudice to either party's position regarding the ability of the Carrier to take appropriate actions to protect service during periods of extraordinary unavailability, if the Carrier is unable to fill an assignment due to lack of rested and available personnel and the blanking of such assignment would result in unavoidable harm to the customer, a qualified employee may be used without penalty to perform such service upon providing notice to the General Chairperson. The Carrier will evaluate the need to exercise its rights under this provision on an assignment-by-assignment basis.

(*Id.* ¶ 71.) Regarding that provision, the Board explained:

> In order to protect the Carrier's ability to provide service, the final Award adopts the Carrier's proposed language that allows it to protect service by using any qualified employee in limited circumstances that could result in unavoidable harm

> to the customer. The Arbitrator acknowledges the Organization's vehement opposition to this provision, but appreciates the Carrier's need to protect service in the face of periods of extraordinary unavailability. The intent of the provision is to provide narrowly tailored relief to the Carrier in limited circumstances. The Parties should develop questions and answers to illustrate the boundaries of this provision during their implementation discussions.

(*Id.* ¶ 70.) In short, the Board exercised independent judgment throughout, adopting some proposals, modifying others, and rejecting others, including portions of the Carrier's vacancy-procedure language and proposed expansion of through-freight pool service. (*See* Dkt. No. 24-16 (Award at 6–9).)

The Board retained jurisdiction for sixty days to permit clarification. (SMF ¶ 72.) During that window, the parties submitted three interpretation questions, and in September 2025 the Neutral issued written responses. (*Id.* ¶ 73.)

> **Q1.** Does Article V.D eliminate extra rest provisions on pools and extra boards on the Eastern District?
>
> Answer: Yes.
>
> **Q2.** Are existing additional allowances/penalty payments, as listed in Article VII.A.4., if applicable, payable to pool freight employees when they are called to perform irregular service the extra board is required to protect?
>
> Answer: Yes.
>
> **Q3.** What is the definition of "a qualified employee" in Article VII.E?
>
> Answer: A qualified employee is any employee who meets the requirements of the job, whether it is the skills level, certification(s), training, and/or experience. Note regarding Question #3: The Award does not differentiate between Union and non-Union employees in Article VII.E when it refers to "a qualified employee." It is anticipated that through the implementation phase and the Questions and Answers, the parties will discuss and agree upon terms consistent with the specific conditions set out in Article VII.E of the Award.
>
> (*Id.* ¶ 74.)

V. SMART-TD's Complaint.

SMART-TD filed this action under 45 U.S.C. § 159 Third and Fourth, seeking to vacate the Award on the sole substantive ground that it "does not conform, nor confine itself, to the stipulations of the agreement to arbitrate." (Dkt. No. 1 (Compl. ¶ 1).) The Complaint asserts three counts, each directed at a different provision of the Award.

Count I challenges Article VII(E)—the "any qualified employee" provision—as exceeding the Board's jurisdiction. SMART-TD contends that local crew-consist agreements already govern who may perform train-service work, that those agreements prohibit non-craft or management employees from filling crew positions, and that Article VII(E) impermissibly overrides those protections by allowing the Carrier to use any "qualified employee" when no rested crew member is available. (*Id.* ¶¶ 81–85.)

Count II challenges the Award's treatment of extra-board rest. SMART-TD alleges that Article V and Q&A 7 entitled extra-board employees to the same kind of fixed, calendar-based days off that pool employees received under the 6/2 model, and that the Board's decision to adopt "Smart Rest"—a trip-based voluntary rest mechanism—instead of assigned days off deprived extra-board employees of the predictable schedule the National Agreement promised. (*Id.* ¶¶ 86–90.)

Count III challenges Article V(D), which eliminates certain preexisting extra-rest provisions that had allowed employees to take additional rest between certain assignments. SMART-TD argues that the Board exceeded its authority because neither party asked the Board to eliminate those legacy protections at the hearing stage, and that the proposal to do so appeared for the first time in Union Pacific's best-and-final submission—after the Preliminary Order had already defined the scope of permissible issues. (*Id.* ¶¶ 91–96).

SMART-TD asks the Court to vacate and set aside the Award in its entirety and to grant related declaratory and injunctive relief. (*Id.* ¶ 1 & p. 26 (Prayer for Relief).) Union Pacific answered, denying all claims and asserting that the Award complies with both the Railway Labor Act and the Agreement to Arbitrate. (Dkt. No. 10 (Answer).) The Court thereafter ordered that this case will be resolved on cross-motions for summary judgment. (Dkt. No. 18.)

LEGAL STANDARD

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Here, the underlying facts are undisputed. The Arbitration Agreement, the Award, the Preliminary Order, the parties' best-and-final submissions, and the September 29, 2025 clarification are all in the record. The dispositive questions—whether the Award "does not conform, nor confine itself, to the stipulations of the agreement to arbitrate," 45 U.S.C. § 159 Third(b), and whether SMART-TD waived its jurisdictional objections—are pure questions of law ideally suited to resolution on summary judgment.

ARGUMENT

I. EACH CHALLENGED PROVISION OF THE AWARD WAS AT LEAST AN ARGUABLE EXERCISE OF THE BOARD'S AUTHORITY.

SMART-TD's three Counts share a single flaw. Each attacks a provision the parties authorized the Board to adopt, and each addresses a disagreement with the Board's implementation choice. Section 9 Third does not permit that sort of substantive review. An award must stand so long as the Board was even arguably exercising its authority under the relevant agreement to arbitrate—and here it plainly was. That defeats all three Counts on the merits.

A. The Only Question Under Section 9 Third Is Whether the Board Was Arguably Exercising Its Authority.

Section 9 of the Railway Labor Act is designed to promote finality. Once filed, an arbitration award is "conclusive on the parties as to the merits and facts of the controversy submitted to arbitration." 45 U.S.C. § 159 (Second). Section 9 Third then permits vacatur on only three narrow grounds. *Id.* § 159 Third. SMART-TD invokes just one: that the Award failed to "conform" or "confine itself" to the parties' agreement to arbitrate. *Id.* § 159 Third(b). And even that limited review proceeds under Congress's express instruction that challenged awards be construed "liberally . . . with a view to favoring [their] validity," and that no award be set aside for a "trivial irregularity or clerical error, going only to form and not to substance." *Id.* § 159 Third(c).

The resulting standard is thus exceptionally deferential. Section 9 Third does not authorize a court to revisit the merits, reweigh the facts, or decide whether the Board reached the best or most persuasive result. It asks only whether the Board was at least "arguably" acting within the authority the parties gave it. *Maine Cent.*, 873 F.2d at 429. If the Award reflects a "viable, permissible interpretation" of the parties' submission, "that is the end of [the] inquiry." *Id.*; *see also Bhd. of Locomotive Firemen & Enginemen v. Chi., Burlington & Quincy R.R. Co.*, 225 F. Supp. 11, 17 (D.D.C. 1964) (review under Section 9 is "exceedingly limited and narrow"); *United Transp. Union v. Birmingham S. R.R. Co.*, 901 F. Supp. 2d 1307, 1312 (N.D. Ala. 2012) (emphasizing "exceedingly narrow" scope of judicial review under Section 9). That is why judicial review under Section 9 Third is "among the narrowest known in the law." *Maine Cent.*, 873 F.2d at 428; *S. Pac. Transp. Co. v. United Transp. Union*, 789 F. Supp. 9, 13 (D.D.C. 1992) (same).

That narrow standard is consistent with broader arbitration law, which courts have relied on in interpreting Section 9. *See Maine Cent.*, 873 F.2d at 428 (drawing the deferential arbitration standard from LMRA and Section 301 cases such as *Enterprise Wheel* and *Misco*); *Maine Cent.*

R.R. Co. v. Bhd. of Maint. of Way Emps., 663 F. Supp. 425, 428–29 (D. Me. 1987) (applying Section 9 and noting "Congress clearly intended to make the scope of judicial review in section 3 identical to that provided in section 9"). Consistent with those principles, the Supreme Court has repeatedly held that an award must be enforced so long as the arbitrator was "even arguably construing or applying" the parties' agreement. *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36–38 (1987); *see United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597–99 (1960). Because the inquiry is limited to whether the arbitrator was interpreting and applying the agreement, rather than whether the arbitrator got the merits "right or wrong," "[c]onvincing a court of an arbitrator's error—even his grave error—is not enough." *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 572 (2013).

That principle also prevents a party from obtaining merits review by labeling its disagreement jurisdictional. The relevant line is not between correct and incorrect arbitration decisions. It is between arbitrators who performed the task assigned and arbitrators who abandoned it. As one court clearly explained:

> As we have said too many times to want to repeat again, the question for decision by a federal court asked to set aside an arbitration award—whether the award is made under the Railway Labor Act, the Taft-Hartley Act, or the United States Arbitration Act—is not whether the arbitrator or arbitrators erred in interpreting the contract; it is not whether they clearly erred in interpreting the contract; it is not whether they grossly erred in interpreting the contract; it is whether they interpreted the contract.

Hill v. Norfolk & W. Ry. Co., 814 F.2d 1192, 1194–95 (7th Cir. 1987); *see Bhd. of Locomotive Eng'rs v. Atchison, Topeka & Santa Fe Ry. Co.*, 768 F.2d 914, 921 (7th Cir. 1985) (explaining that the only question to be asked is "whether the arbitrators did the job they were told to do—not whether they did it well, or correctly, or reasonably, but simply whether they did it").

Eighth Circuit precedent is equally clear, emphasizing that courts may not revisit the merits of arbitration awards based on allegations of factual error, contract misinterpretation, or disagreement with the result. *See Sullivan v. Endeavor Air, Inc.*, 856 F.3d 533, 537–39 (8th Cir. 2017); *Goff v. Dakota, Minn. & E. R.R. Corp.*, 276 F.3d 992, 996 (8th Cir. 2002); *Bhd. of Maint. of Way Emps. v. Soo Line R.R. Co.*, 266 F.3d 907, 909 (8th Cir. 2001); *McClendon v. Union Pac. R.R. Co.*, 640 F.3d 800, 804 (8th Cir. 2011). Most notably, in a 2021 appeal involving these same parties, the Eighth Circuit held that "[c]ourts are not authorized to review the arbitrator's decision on the merits despite allegations that the decision rests on factual errors or misinterprets the parties' agreement." *Union Pac. R.R. Co. v. Int'l Ass'n of Sheet Metal, Air, Rail & Transp. Workers (SMART)-Transp. Div.*, 988 F.3d 1014, 1017 (8th Cir. 2021). The court noted that the question is simply "whether they interpreted the contract." *Id.*

The upshot is a straightforward rule: an award must be enforced if the arbitrators were at least arguably doing the work the parties assigned them. Here, the 2022 National Agreement gave the Board broad authority to decide the changes necessary to implement Articles V, VI, and VII, including "whether and how" those rules would be implemented. (SMF ¶¶ 30, 32, 35.) SMART-TD therefore must show that the Board abandoned that assignment—not merely that it chose terms SMART-TD dislikes. It cannot come close to making that showing. Each challenged provision is, at minimum, a permissible implementation of the Articles submitted to the Board.

B. Count I: The "Qualified Employee" Provision Was Within the Board's Authority.

SMART-TD first contends that Article VII(E)—the "qualified employee" provision—exceeds the Board's authority because it allegedly conflicts with other agreements that govern who may perform train-service work. (Dkt. No. 1 (Compl.) ¶¶ 81–85.) The argument is that those agreements prohibit non-craft or management employees from filling crew positions, and that the

Award impermissibly overrides those protections by allowing the Carrier to use any "qualified employee" when no rested crew member is available. That is not a jurisdictional challenge—it is a merits dispute about how the Award should interact with other agreements in future applications.

Articles V and VII expressly authorize the Board to decide "whether and how the rules referenced in [them] will be implemented." Pursuant to those Articles, the Board awarded voluntary rest days to employees in through-freight service and increased existing pre-arranged lay-off thresholds from 4% to 8%, effectively doubling the number of employees who can be off work at any given time. SMART-TD advocated for these changes, a natural consequence of which is that fewer employees are available to do the same amount of work. Considering these consequences, and what, if any, adjustments were necessary in light of them, was part of the Board's role in determining how to implement the changes—something the Board was expressly authorized to do.

Consistent with that mandate, the Board adopted the "qualified employee" provision. That provision, as the Board explained, creates additional options to protect service, but only during periods of "extraordinary unavailability," only when the Carrier "is unable to fill an assignment due to lack of rested and available personnel," only when blanking the assignment "would result in unavoidable harm to the customer," and only after providing notice to the General Chairperson on an "assignment-by-assignment basis." Dkt. No. 24-16 (Award Ex. A art. VII(E)). It is a direct response to new circumstances created by Article V and VII changes; the Board was well within its authority to adopt it.

SMART-TD's own framing effectively concedes the point. It does not argue that service protection falls outside the scope of Article VII, or that the Board lacked authority to address what happens when no rested employee is available. Its objection is that the Board's *solution* may conflict with separate local agreements—a challenge that necessarily assumes the Board had authority to adopt a service-protection provision in the first place. That assumption is fatal to Count I. If the Board had authority to address the staffing gap (and it plainly did), then SMART-TD's complaint about how the provision interacts with crew-consist agreements is a disagreement with the substance of the Award, *not with the Board's jurisdiction to issue it*.

If SMART-TD believes that a future application of Article VII(E) violates a local crew-consist agreement, the remedy is a grievance or arbitration under that agreement—not vacatur of the Award that created the provision. Section 9 Third asks only whether the Board was "arguably" exercising the authority the parties delegated. *Maine Cent.*, 873 F.2d at 429; *Hill*, 814 F.2d at 1194–95. The Board plainly was. SMART-TD's disagreement with how the provision might operate in practice is exactly the kind of merits objection that Section 9 Third forecloses. *See Oxford Health Plans*, 569 U.S. at 572 ("Convincing a court of an arbitrator's error—even his grave error—is not enough.").

C. Count II: The "Smart Rest" Provision Was Within the Board's Authority.

SMART-TD contends that Article V and Q&A 7 entitled extra-board employees to the same kind of fixed, calendar-based days off that pool employees received under the 6/2 model, and that the Board's decision to adopt "Smart Rest"—a trip-based voluntary rest mechanism—instead of assigned days off somehow deprived extra-board employees of the predictable schedule the National Agreement promised. (Dkt. No. 1 (Compl.) ¶¶ 86–90.) That argument is a quarrel with the Board's *choice* of rest model, not a challenge to its *authority* to make the choice.

Article V authorized the Board to implement voluntary rest rules for through-freight road service employees, including those on road extra boards. A General Committee seeking "rules creating voluntary assigned days off in thru freight road service" may serve notice, and if no agreement is reached, the Board has jurisdiction to determine "whether and how the rules referenced in this Article will be implemented." Dkt. No. 24-2 (2022 National Agreement) at 8–9. The Q&As confirm that Article V applies to "extra boards that protect thru freight road service," that voluntary assigned-day-off rules for those boards are subject to the same bargaining and arbitration process, and that the "number and frequency" of scheduled days off were left to that process—not predetermined by the National Agreement. *Id.* at 41–42 (Q&A Nos. 4, 6, 7).

The Board exercised that authority by adopting a 6/2 rest cycle for through-freight pool employees and Smart Rest for road extra-board employees. Dkt. No. 24-16 (Award) at 5–6. Smart Rest allows an extra-board employee to activate 24 hours of "voluntary undisturbed rest" after working five consecutive trips. *Id.*; *see also id.* at 11–12 (Art. V.B.1). The Board explained the balance it struck: the 6/2 model advanced predictability and quality of life for pool employees, while Smart Rest was viewed as a workable solution that offset the added cost of the more rest-favorable pool model. *Id.* at 5–6.

Nothing in Article V required the Board to adopt identical rest rules for pools and extra boards, or mandated SMART-TD's preferred fixed-calendar schedule. The Q&As contemplate that Article V could produce different "versions" of voluntary assigned-day-off rules and left the form, number, and frequency of rest days to bargaining or arbitration. Dkt. No. 24-2 (2022 National Agreement) at 41–42 (Q&A Nos. 1, 6). Smart Rest simply answers the "how" question Article V delegated: it specifies when extra-board employees may take voluntary rest, what triggers it, and how long it lasts. Dkt. No. 24-16 (Arbitration Award) at 11–12 (Art. V.B). Those are implementation mechanics, not matters outside the submission.

SMART-TD's real objection is that Smart Rest is not truly "scheduled" or "predictable" because extra-board employees' time off depends on whether and when they complete five consecutive trips. But Smart Rest is predictable in the relevant sense: the triggering condition, rest duration, and guarantee status are all fixed in advance by the Award.[3] *Id.* It is not the fixed-calendar schedule SMART-TD wanted, but Article V did not require that form of predictability—it authorized the Board to decide *how* rest would be implemented for extra boards. Dkt. No. 24-2 (2022 National Agreement) at 8–9 (Art. V); *id.* at 42 (Q&A No. 6). SMART-TD's complaint is that the Board should have chosen a different model. That is the definition of an unreviewable merits objection. *See Oxford Health Plans*, 569 U.S. at 572; *Maine Cent.*, 873 F.2d at 429; *Hill*, 814 F.2d at 1194–95 ("[T]he question . . . is whether they interpreted the contract. If they did, their interpretation is conclusive.").

That resolves Count II. The Court is not called upon to decide whether Smart Rest is the best rest rule or the rule SMART-TD would have chosen. The only question is whether the Board was at least arguably exercising the authority delegated to it. It plainly was. Article V covers voluntary rest in through-freight service, including road extra boards. The Board adopted a voluntary rest rule for those extra boards. Section 9 Third does not permit vacatur merely because SMART-TD prefers a different kind of scheduled rest.

D. Count III: The Elimination of Extra-Rest Provisions Was Within the Board's Authority.

Finally, SMART-TD argues that the Board exceeded its authority by eliminating certain preexisting extra-rest provisions under Article V(D), because the proposal to do so appeared for the first time in Union Pacific's best-and-final submission—not in the initial filings or at the hearing. (Dkt. No. 1 (Compl.) ¶¶ 92–95.) The implicit premise is that the Board's jurisdiction is limited to issues raised at a particular procedural stage. That premise is wrong as a matter of both law and fact.

[3] Moreover, to the extent an employee does not work five consecutive starts, they are by definition getting at least 24 hours of rest – and potentially much more – between working.

First, the argument confuses the scope of the parties' *briefing* with the scope of the Board's *authority*. The Board's jurisdiction derives from the National Agreement and the agreement to arbitrate, not from whether a particular proposal was raised at the hearing or only at the best-and-final stage. The only circuit court to address this issue under Section 9 Third has expressly rejected that argument, explaining that "the actions of the parties cannot determine the scope of arbitration." *Maine Cent.*, 873 F.2d at 429. Here, the agreement authorized the Board to decide "whether and how" Article V would be implemented—including "voluntary assigned days off in thru freight road service"—and the Q&As confirm that Article V covers extra boards and that the "number and frequency" of rest days were left to bargaining or arbitration. Dkt. No. 24-2 (2022 National Agreement) at 8–9 (Art. V); *id.* at 42 (Q&A Nos. 6–7). Deciding whether older, overlapping extra-rest provisions would survive the new system is part and parcel of deciding "how" that system operates. A board charged with implementing voluntary rest is not limited to layering new rules on top of every preexisting mechanism—it may decide how old and new rules fit together, whether they stack or coexist, and whether the new regime replaces prior provisions. That goes directly to the design, cost, workability, and quid pro quo of the Article V implementation.

Second, even recast as a timing objection, SMART-TD's premise fails. Although Union Pacific advanced its extra-rest elimination language in its best-and-final submission, whether the existing extra-rest provisions would survive the new Article V regime was squarely before the Board—because SMART-TD itself placed it there. SMART-TD's opening submission devoted an entire section to "Elimination of Rest Outside of RSIA Requirements," arguing that those provisions should be preserved. Dkt. No. 24-6 (SMART-TD Opening Submission) at 59; *id.* at 17 (identifying proposal to "eliminate all provisions governing rest (extra, voluntary, or extensions) and fatigue mitigation programs"). Having affirmatively litigated whether those provisions should be retained, SMART-TD cannot now contend that the Board lacked authority to resolve that very question.

The Board did exactly what its mandate required. It adopted a 6/2 rest cycle for pools and Smart Rest for extra boards, then determined that existing provisions allowing "extending, additional, or extra rest" could not coexist with the new system. Dkt. No. 24-16 (Arbitration Award) at 12 (Art. V.D). That is a determination about "how" the new Article V system operates, squarely within the Board's authority. Like SMART-TD's challenges to the qualified-employee provision and Smart Rest, Count III ultimately attacks the substance of the Board's decision, not its authority to make it. Section 9 Third permits review of the latter, not the former. *Maine Cent.*, 873 F.2d at 429; *see Misco*, 484 U.S. at 38; *Oxford Health Plans*, 569 U.S. at 572.

II. SMART-TD Waived Its Jurisdictional Objections as to Counts I, II, and III

Under the doctrine of waiver, a party cannot participate in arbitration, litigate an issue on the merits, lose, and then collaterally attack the award on a ground it never presented to the arbitrator. That rule applies with full force even when the objection is framed as "jurisdictional," because an objection to an arbitrator's authority is not the same as an objection to a federal court's subject-matter jurisdiction—and is therefore waivable.

The governing rule is straightforward: "[U]nlike an objection to a federal court's lack of subject-matter jurisdiction, which can never be waived, an argument that an arbitrator lacked subject-matter jurisdiction is waivable." *Union Pac. R.R. Co. v. Am. Ry. & Airway Supervisors' Ass'n*, 838 F. App'x 846, 851-52 (5th Cir. 2020) (per curiam). A party therefore "may not sit idle through an arbitration procedure and then collaterally attack that procedure on grounds not raised before the arbitrators." *Loc. 1982, Int'l Longshoremen's Ass'n v. Midwest Terminals of Toledo, Int'l, Inc.*, 944 F.3d 607, 610 (6th Cir. 2019) (quoting *Marino v. Writers Guild of America, E., Inc.*, 992 F.2d 1480, 1484 (9th Cir. 1993)); *Brook v. Peak Int'l, Ltd.*, 294 F.3d 668, 674 (5th Cir. 2002) (same); *accord Kiernan v. Piper Jaffray Cos.*, 137 F.3d 588, 593 (8th Cir. 1998). If a party believes an arbitrator lacks authority over an issue, it must say so while the arbitrator can still address the objection. It cannot litigate the issue on the merits, await the result, and then recast its losing position as a jurisdictional challenge. That is precisely what happened here.

1. Start with Count I. SMART-TD did object to the qualified-employee provision during the arbitration, but not on jurisdictional grounds. It argued that the provision was impermissible because it conflicted with separate instruments—local crew-consist agreements' non-craft-infringement clauses and PEB 250's recommendation that carriers withdraw their crew-consist proposal. Dkt. No. 24-11 (Day 2 Hearing Tr.) 35:22–36:21; Dkt. No. 24-12 (Day 3 Hearing Tr.) 26:6–9). Those were merits arguments about the effect of other agreements, not objections that the issue fell outside the Agreement to Arbitrate or beyond the Board's authority. As Union Pacific explained to the Board at the time, the existence of other agreements "tells you nothing because this is an interest arbitration proceeding, and we're talking about implementing new rules and new procedures." Dkt. No. 24-12 (Day 3 Hearing Tr.) 26:17–22). Having asked the Board to reject the qualified-employee provision because it allegedly conflicted with other agreements, SMART-TD cannot now repackage that same contention as a challenge to the Board's jurisdiction. *See Kiernan*, 137 F.3d at 593; *Lodge No. 725, Int'l Ass'n of Machinists v. Mooney Aircraft, Inc.*, 410 F.2d 681, 683 (5th Cir. 1969).

SMART-TD's conduct after the Award issued confirms the point. Rather than argue that the Board lacked authority to adopt Article VII(E), SMART-TD invoked the Board's interpretation process and asked the Board to clarify the meaning of "qualified employee." Dkt. No. 24-18 (Board's Response to Interpretation Questions) at 1–2. A party that asks an arbitrator to interpret a provision necessarily treats that provision as within the arbitrator's authority. That conduct is fundamentally inconsistent with the claim SMART-TD advances now.

2. As to Count II, the pattern repeats. SMART-TD now contends that the Award's adoption of Smart Rest for extra-board employees, in lieu of scheduled days off, fails to conform to Article V and Q&A 7. But SMART-TD litigated that very question before the Board on the merits and at length. Its reply submission devoted an entire section to "RSIA and Smart Rest" and argued, under the heading "Mandatory Work/Rest Schedules – Guaranteed Extra Boards," that the Carrier's Smart Rest model was unworkable and unpredictable and should be rejected in favor of its proposal. Dkt. No. 24-8 (SMART-TD Rebuttal Submission) at 14, 27–28. Its opening submission had already proposed a competing scheduled-days-off model for extra boards and argued that Article V applies to extra boards. Dkt. No. 24-6 (SMART-TD Opening Submission) at 17, 19. And at the hearing, SMART-TD pressed similar points to those it presses now—that Smart Rest "is a mandatory system" under which an employee "will be forced to take 24 hours off," and that it yields no predictability because, when starts are interrupted, "when do you have a predictable day off you can observe? There is none." Dkt. No. 24-11 (Day 2 Hearing Tr.) 21:8–21). But those were *merits* arguments about which rest model Article V permits or requires. What is missing is any claim that the Board lacked *authority* to resolve that question in the first place.

If anything, SMART-TD did the opposite of raising a jurisdictional objection: it urged the Board to exercise its authority by adopting SMART-TD's preferred model. Even its assertion that "Article 5 does not permit an arbitrator to impose mandatory days off," *id.* 24:4–5, was an argument about the remedy the Board could order, advanced to persuade the Board to choose its proposal over the carrier's—not a contention that the Board lacked power to resolve the issue. A party that asks the arbitrator to adopt its proposed rule necessarily treats the matter as within the arbitrator's authority. Having litigated and lost that merits contest, SMART-TD cannot recast its disagreement with the Board's rest model as a challenge to the Board's jurisdiction to make that choice. *See Kiernan*, 137 F.3d at 593; *Franklin Elec. Co. v. Int'l Union, UAW*, 886 F.2d 188, 192 (8th Cir. 1989); *Mooney Aircraft*, 410 F.2d at 683.

3. Throughout the arbitration, SMART-TD treated the elimination of extra-rest provisions as a merits issue. Its opening submission argued that existing provisions allowing employees to take additional rest should be preserved, and it devoted an entire section of its brief to "Elimination of Rest Outside of RSIA Requirements," explaining why Union Pacific's proposal should be rejected. Dkt. No. 24-6 (SMART-TD Opening Submission at 59). Those arguments asked the Board to decide the issue in SMART-TD's favor; they did not argue that the Board lacked authority to decide it at all. Having submitted the issue to the Board and litigated it on the merits, SMART-TD cannot now contend that the Board lacked jurisdiction to resolve it. *See Mooney Aircraft*, 410 F.2d at 683; *Union Pac.*, 838 F. App'x at 852.

SMART-TD's "best-and-final proposal" theory only underscores the waiver problem. SMART-TD alleges that Article V(D) exceeded the scope of the arbitration because the proposal appeared in Union Pacific's best-and-final submission rather than its initial filing. (Dkt. No. 1 (Compl.) ¶¶ 92–95.) But if SMART-TD believed that proposal fell outside the Preliminary Order, it was required to raise that objection before the Board. SMART-TD could have moved to strike the proposal, objected to its consideration, or otherwise asked the Board to exclude it. It did none of those things. Having failed to raise the issue when it mattered, SMART-TD cannot reserve the objection for federal court.

In sum, at every stage of the arbitration—during briefing, in response to Union Pacific's proposals, and in the post-award clarification process—SMART-TD treated these issues as matters properly before the Board. Only after receiving an unfavorable Award did it recast its objections as jurisdictional. The waiver doctrine forecloses that belated effort.

III. Conclusion

For the foregoing reasons, SMART-TD has failed to establish any basis for vacating the Award under Section 9 Third of the Railway Labor Act. The Board was charged with determining "whether and how" the new framework would be implemented, and each challenged provision reflects the Board's exercise of that delegated authority.

SMART-TD's objections ultimately challenge the Board's implementation choices—not its power to make them. Under the Railway Labor Act's exceptionally narrow standard of review, the Court's role is not to decide whether the Board reached the best result, or even the correct one; it is to determine whether the Board performed the task assigned to it. Because the Board was at least arguably interpreting and applying the parties' agreement, and because SMART-TD waived any contrary jurisdictional objection by litigating the merits without raising it, the Court should grant Union Pacific's motion for summary judgment, deny SMART-TD's cross-motion, and enforce the Award in full.

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Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will serve all counsel of record.

s/ Thomas R. Chiavetta

CERTIFICATE OF COMPLIANCE

The undersigned certifies that, as indicated by Microsoft Word's word-count function as applied to include all text, including the caption, headings, footnotes, and quotations, this brief contains 9,694, and thus complies with L. Civ. R. 7.1(d)(1).

s/ Thomas R. Chiavetta