

2

ARBITRATION PROCEEDING

United Transportation Union
and
Union Pacific Railroad Company, et al.
Control and Merger - Southern Pacific
Transportation Company, et al.

STB Finance Docket
No. 32760

Findings and Award
Pursuant to Art. I,
Section 4, New York
Dock Conditions

Appearances:

For the Organization:

Byron A. Boyd, Jr., Assistant President
Clinton J. Miller III, General Counsel
J. Previsich, General Chairman

For the Carrier:

W. S. Hinckley, General Director Labor Relations
Dick Meredith, Asst. Vice President-Employee Relations, Planning
Catherine J. Andrews, Assistant Director Labor Relations
Mark E. Brennan, Operating Department

FINDINGS:

The parties to this dispute are the United Transportation Union and the Union Pacific System/Southern Pacific System. In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board (STB) approved the merger of the two systems which included various rail entities.

In accordance with New York Dock provisions the Carrier served notices on the Organization's General Chairmen covering two geographical areas referred to by the Carrier as the Salt Lake Hub and the Denver Hub. The parties in their submissions detailed the negotiating dates which covered approximately a 120 day period. The parties were unable to reach an agreement and a request was made for arbitration in accordance with New York Dock. The parties were unable to jointly select an arbitrator and through a joint letter to the National Mediation Board requested that one be appointed. By letter dated February 21, 1997 the undersigned was appointed by the National Mediation Board.

This arbitration is somewhat unique in that in addition to the normal terms and conditions of arbitration, under New York Dock, the Organization requested arbitration of what is known as the

"commitment letter". This letter was signed by the Carrier and addressed to the Organization's President and provided for certain commitments with regards to the entire merger process beginning with the Carrier's filing with the STB. It is the Organization's position that the Carrier did not live up to the commitments and as a result the issues raised therein should be arbitrated.

Two separate arbitration presentations were made beginning on March 25, 1997, one covering the commitment letter and the other the terms and conditions to govern the two Hubs. Since these two hearings are so intertwined, they shall be dealt with in this one award.

COMMITMENT LETTER

The purpose of the letter was to 1. Limit the Organization's exposure in the merger to items "necessary" to completing the merger, 2. Gain protection certification under New York Dock for a number of employees, and 3. Give affected General committees an opportunity to develop a seniority system for the merged areas.

In exchange, the Carrier wanted 1. the UTU's support for the merger and operating plans, 2. the Organization's recognition that some changes were "necessary" in the merger and, 3. a seniority system that was not illegal, administratively burdensome or costly.

It is apparent that the writer and the addressee of the commitment letter understood the benefits of a simpler merger process than the parties had previously undertaken: however, the negotiators on both sides failed to see the same benefits and in essence pushed the envelope too far. Both parties included items in their proposals that went beyond what was necessary. While the Organization was the moving party in requesting arbitration over the letter, their proposals included several unnecessary items such as changing work rules, cherry picking work rules, certification beyond the number in the commitment letter in lieu of relocation and a seniority system that was administratively burdensome and potentially more costly. However, when the Carrier's proposals, which included an unnecessary 25 mile zone and crew consist changes are brought before this arbitrator, it is not difficult to say that anything beyond what was contemplated in the commitment letter will not be used to escape any commitment to provide for automatic certification as provided later in this award, because the parties failed to make a voluntary agreement.

It is apparent to this arbitrator that not all the parties to the negotiations are aware or understand the value the Organization received by the letter. Some members of the Organization's

negotiating team apparently feel there is no need to reach a voluntary agreement in order to achieve automatic certification and have made demands that most certainly will not lead to such a voluntary agreement. On the other hand, as mentioned above the Carrier has reached beyond the limits that would be acceptable to creating a voluntary agreement.

Neither party should take comfort in future negotiations that this award provides for future automatic certification. The commitment letter is an example of responsible recognition of the needs of both parties and for the first round of merger negotiations/arbitration this arbitrator simply will not substitute his judgement for those behind the commitment letter.

TERMS AND CONDITIONS

One of the key areas of dispute deals with what is "necessary" to accomplish the merger. In reviewing previous mergers and the need to coordinate employees and operations at common points and over parallel operations, it is proper to unify the employees and operations under a single collective bargaining agreement and single seniority system in each of the two Hubs. This does not mean the Carrier has authority to write a new agreement, but the Carrier's selection of one of the existing collective bargaining agreements to apply to all those involved in a Hub as proposed in this case is appropriate.

While selecting one existing collective bargaining agreement puts many issues to rest, both parties recognized in the letter that other changes may be necessary for a merger to accomplish a smooth flow of operations. These changes, however, were not to be monetary but operational. Such operational changes would include the combining of yards into single terminals, consolidating pool freight, local and road switcher operations and combining extra boards into fewer extra boards that would cover the more expansive operations of the two Hubs.

Seniority is always the most difficult part of a merger. There are several different methods of putting seniority together but each one is a double-edged sword. In a merger such as this one that also involves line abandonments and alternate routing possibilities on a regular basis, the tendency is to present a more complicated seniority structure as the Organization did. What is called for is not a complicated structure but a more simplified one that relies on New York Dock protection for those adversely affected and not perpetuating seniority disputes long into the future. The Carrier's proposals fairly address the issue in both Hubs.

There are two issues that must be addressed with regards to crew consist. The first is the special allowance/productivity fund issue and the second is the Carrier's request for the least restrictive yard/local provisions to overlay the Eastern District agreement. The second is easier to deal with. If the Carrier believed that another agreement would better fit this area, it had the opportunity to select that agreement for this area in total. Since it did not, this arbitrator will not give a separate crew consist provision to them. The Eastern District agreement covers this area with respect to crew size and work in both yard and road service.

The special allowance/productivity funds must be coordinated. This arbitrator does not see any undue advantage to the Carrier in its proposal to pay out the existing funds and create a new one. Those who would have been eligible for a productivity fund and special allowance had they worked under the Eastern District agreement since their entry into train service shall be entitled to them under the new plan. Those who sold their special allowances/productivity funds previously are not entitled to a windfall now and would not be eligible for those payments regardless of their seniority date.

Without the commitment letter, the Carrier is not required to certify any employees as protected. The letter identified a number of employees to be protected and the Carrier's notices, as amended, identified a larger number. Since the Carrier's proposal exceeded the commitment letter, it should protect the larger number referenced in its notices. If the Eastern District General Chairman and Carrier are not able to agree within 30 days of this Award who the specific employees are, then it shall be the employees whose assignments are involuntarily changed until the number in the notices is reached. If both proposals were proper and were not over reaching, as they were here, then this arbitrator would not have imposed this provision.

I have identified the major issues in more detail above and now turn to the proposals. In reviewing the proposals, this Board finds that the Carrier's proposals, including questions and answers, for each Hub, submitted to this panel are appropriate for inclusion as part of this Award except for the following:

Salt Lake City proposal:

1. Article III A (2) and (3) concerning the metro complex.
2. Article IV B (1) concerning the 25 mile zone.
3. Article VI protection is amended per above.
4. Article VIII E. Concerning the least restrictive crew consist.

5. All questions and answers referring to these eliminated sections.

Denver Hub proposal:

1. Article IV B (1) concerning the 25 mile zone.
2. Article VI protection is amended per above.
3. Article IX E concerning the least restrictive crew consist.
4. All questions and answers referring to these eliminated sections.

Copy of Carrier's proposed implementing agreement for the Salt Lake Hub and the Denver Hub are attached hereto and made a part of this Award.

This arbitrator is convinced from the facts of record that the changes contained in the Carrier's proposals as modified by the exceptions noted herein are necessary to effectuate the STB's approved consolidation and yield enhanced efficiency in operations benefiting the general public and the employees of the merged operations.

This Award is final and effective immediately. Should the Organization and the Carrier desire to continue negotiations over other elements then they should so proceed. These negotiations should be between the Eastern District General Chairman and the Carrier. These would be voluntary and not subject to Section 4 New York Dock arbitration if they do not prove fruitful.

Signed this 14th day of April 1997.


James E. Yost, Arbitrator

**MERGER IMPLEMENTING
AGREEMENT
(Salt Lake Hub)**

between the

**UNION PACIFIC RAILROAD COMPANY
SOUTHERN PACIFIC RAILROAD COMPANY**

and the

UNITED TRANSPORTATION UNION

In Finance Docket No. 32760, the Surface Transportation Board approved the merger of Union Pacific Railroad Company/Missouri Pacific Railroad Company (Union Pacific or UP) with the Southern Pacific Transportation Company, the SPCSL Corp., the SSW Railway and the Denver and Rio Grande Western Railroad Company (SP). In approving this transaction, the STB imposed New York Dock labor protective conditions.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all employees working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement,

IT IS AGREED:

I. SALT LAKE HUB.

A new seniority district shall be created that is within the following area: DRGW mile post 446.5 at Grand Junction, UP mile post 161.02 at Yermo, UP mile post 665.0 and SP mile post 553.0 at Elko, UP mile post 110.0 at McCammon and UP mile post 847 at Granger and all stations, branch lines, industrial leads and main line between the points identified.

II. SENIORITY AND WORK CONSOLIDATION.

The following seniority consolidation will be made:

A. A new seniority district will be formed and master Seniority Rosters-- (UP/UTU) Salt Lake Hub--will be created for the employees working as Conductors, Brakemen, Yardmen (the term yardman shall, in this agreement, refer to all yard positions

including foreman, helper, utility man, herder, switchtender and post October 31, 1985 hostlers) and Firemen in the Salt Lake Hub on November 1, 1996. (The term "trainmen" is used hereafter as a generic term to include all UTU-C,T&Y represented employees and where applicable all UTU-E represented employees) The four new rosters will be created as follows:

1. Switchmen/brakemen placed on these rosters will be dovetailed based upon the employee's current seniority date. If this process results in employees having identical seniority dates, seniority will be determined by the employee's current hire date with the Carrier.
2. Conductors placed on these rosters will be dovetailed based upon the employee's actual promotion date into the craft. If this process results in employees having identical seniority dates, seniority will be determined by the employee's current hire date with the Carrier.
3. All employees placed on a roster may work all assignments protected by a roster in accordance with their seniority and the provisions set forth in this agreement.
4. New employees hired and placed on the rosters subsequent to the adoption of this agreement will have no prior rights.

B. Employees assigned to the merged rosters with a seniority date prior to November 1, 1996, will be accorded primary prior rights reflecting their previous seniority areas that remain in the Hub and secondary prior rights with dovetail rights being the final determination for selection purposes to pool operations as follows:

POOL	PRIMARY	SECONDARY	DOVETAIL
SLC-MILFORD	S. CENTRAL	NONE	YES
SLC-POCATELLO	IDAHO	NONE	YES
SLC-Green River	UPED/IDAHO-ratio	NONE	YES
OG-Green River	UPED	DRGW	YES
OG-ELKO	SP	WP	YES
SLC-ELKO	WP	SP	YES
SLC-Provo/Helper/Grand Jct.	DRGW	NONE	YES
SLC-PROVO	DRGW	NONE	YES
Milford-Provo/Helper	SO. CENTRAL	DRGW	YES

Milford-Las Vegas	So. Central/Las Vegas	NONE	YES
Las Vegas-Yermo	LAS VEGAS	NONE	YES

Note 1: The Carrier does not plan Salt Lake City - Ogden pool operations and this service will be handled by an extra board or road switcher service. If sufficient extra work develops to sustain 4 or more pool turns, then a pool shall be established and pro rated on a 50/50 basis with Idaho prior right employees taking the odd numbered turns and DRGW prior right employees taking the even numbered turns.

Note 2: Salt Lake City - Helper may be combined with either the Salt Lake City - Grand Junction or the Salt Lake City - Provo pool.

Note 3: This Section does not limit the Carrier to these pool operations. New pools operated on prior rights areas will have the same primary prior rights and those that operate over two prior right areas will be manned from the dovetail roster.

Note 4: The Salt Lake City-Elko pool and the Salt Lake City-Grand Junction pool shall be single-headed operations with Salt Lake City as the home terminal. The Carrier shall give ten days written notice of the change to single headed pools if not given in the original 30 day implementation notice.

C. Yard crews will not be restricted in a terminal where they can operate but the following will govern which employees will have preference for assignments that go on duty in the following areas:

LOCATION	PRIMARY	SECONDARY	DOVETAIL
ROPER	DRGW	IDAHO	YES
SLC-NorthYard/Intermodal	IDAHO	DRGW	YES
OGDEN	OURDIDAHO	SP	YES
ELKO	WP	SP	YES
CARLIN	SP	WP	YES
PROVO	DRGW	South Central	YES
Transfer Jobs	On Duty Point	NONE	YES
LAS VEGAS	LAS VEGAS	NONE	YES

D. Road Switchers will work in a given area and may cross prior right boundaries. Employees shall have prior rights to road switchers based on the on duty points:

1. Salt Lake City - North: Idaho.
2. Salt Lake City - Provo: DRGW
3. Provo - Milford: South Central
4. Salt Lake City - Milford via Tintic: South Central
5. In other areas the prior rights of the on duty points will govern.

E. Locals that continue current operations shall be prior righted. Locals that operate over more than one prior rights area shall be prior righted based on the on duty point.

F. It is understood that certain runs home terminated in the Salt Lake Hub will have away from home terminals outside the Salt Lake Hub and that certain runs home terminated outside the Salt Lake Hub will have away from home terminals inside the Salt Lake Hub. Examples are: Salt Lake City/Ogden runs to Green River and Pocatello, and Portola/Sparks to Elko. It is not the intent of this agreement to create seniority rights that interfere with these operations or to create double headed pools. For example, Sparks will continue to be the home terminal for Sparks/Elko runs and a double headed pool will not be established.

G. All trainman vacancies within the Salt Lake Hub must be filled prior to any trainman being reduced from the working list or prior to trainman being permitted to exercise to any reserve boards.

H. With the creation of the new seniority district all previous seniority outside the Salt Lake Hub held by trainmen on the new rosters shall be eliminated and all seniority inside the Hub held by trainmen outside the Hub shall be eliminated.

I. Trainmen will be treated for vacation and payment of arbitraries as though all their service on their original railroad had been performed on the merged railroad.

J. Trainmen who have been promoted to Engine service and hold engine service seniority inside the Salt Lake Hub and working therein on November 1, 1996 shall be placed on the appropriate roster(s) using their various trainmen seniority dates. Those Engine service employees, if any, who do not have a train service date in the Salt Lake Hub shall be given one in accordance with the October 31, 1985 National Agreement. Those engine service employees who previously came from an area that was not covered by an UTU-E contract shall be placed on the dovetail UTU-E roster with their current "reserve engineer" (fireman) seniority date.

III. TERMINAL CONSOLIDATIONS.

The terminal consolidations will be implemented in accordance with the following provisions:

A. Salt Lake City/Ogden Metro Complex. A new consolidated Salt Lake City/Ogden Metro Complex will be created to include the entire area within and including the following trackage:

Ogden mile posts 989.0 UP east, 3.25 UP north and 780.21 SP west and to Salt Lake City mile posts 739.0 DRGW south and 781.17 UP west.

1. All UP and SP pool, local, work train and road switcher operations within the SLC/Ogden Metro Complex shall be operated as a single carrier operation.
2. All road crews may receive/leave their trains at any location within the boundaries of the new complex and may perform any work within those boundaries pursuant to the controlling collective bargaining agreements. The Carrier will designate the on/off duty points for road crews within the new complex with the on/off duty points having appropriate facilities for inclement weather and other facilities as currently required in the collective bargaining agreement. The on-duty points shall be the same as the off-duty points.
3. All rail lines, yards and/or sidings within the new complex will be considered as common to all crews working in, into and out of the complex. All crews will be permitted to perform all permissible road/yard moves. Interchange rules are not applicable for intra-carrier moves within the complex.
4. In addition to the consolidated complex, all UP and SP operations within the greater Salt Lake City area and all UP and SP operations (including the OUR&D) within the greater Ogden area shall be consolidated into two, separate terminal operations. The existing switching limits at Ogden will now include the former SP rail line to SP Milepost 780.21. The existing UP switching limits at Salt Lake City will now include the Roper Yard switching limits (former DRGW) to DRGW Milepost 739.0.

B. Provo. All UP and SP operations within the greater Provo area shall be consolidated into a unified terminal operation.

C. Elko/Carlin. All UP and SP operations within the greater Elko and Carlin area shall be consolidated into a unified terminal operation at Elko. Carlin will become a station enroute.

D. General Conditions for Terminal Operations.

1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1985 and 1991 National Awards and implementing agreements.
2. Employees will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the October 31, 1985 National Agreement.
3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service zone, shall continue to apply. Yard crews at any location within the Hub may perform such service in all directions out of their terminal.

Note: Items 1 through 3 are not intended to expand or restrict existing rules.

IV. POOL OPERATIONS.

A. The following pool consolidations may be implemented to achieve efficient operations in the Salt Lake City Hub:

1. **Salt Lake City - Elko and Ogden - Elko.** These operations may be run as either two separate pools or as a combined pool with the home terminal within the Salt Lake City/Ogden metro complex. This pool service shall be subject to the following:
 - (a) If the pools are combined, then the former SP and WP trainmen shall have prior rights on a 40/60 basis.
 - (b) If separate pools, the Carrier may operate the crews at the far terminal of Elko as one pool back to the metro complex with the crew being transported by the Carrier back to its original on duty point at the end of their service trip.
 - (c) The Carrier must give ten days written notice of its intent to change the number of pools or to combine the pools at Elko for a single pool returning to Salt Lake City/Ogden.

(d) Since Elko will no longer be a home terminal for pool freight operations east to the metro complex a sufficient number of pool and extra board employees will be relocated to the metro complex.

2. **Salt Lake City - Green River/Pocatello and Ogden - Green River.** These operations may be run as either one, two, or three separate pools. The Carrier shall determine whether to combine any or all of the pools and shall give ten days notice of its combining of pools.

3. **Salt Lake City - Grand Junction/Helper/ Provo.** These operations may be run as either one, two, or three separate pools with the home terminal within the metro complex. The carrier must give ten days written notice of its intent to change the number of pools. If run as a combined pool(s) then prior rights to the pool(s) shall be based on the percentages that existed on the day the ten day notice is given.

4. **Helper-Grand Junction/Provo and Milford-Provo/Helper.** Each of these operations will be run as a single pool.

5. **Other Service.** Any pool freight, local, work train or road switcher service may be established to operate from any point to any other point within the new Seniority District with the on duty point within the new seniority district.

Note: All service, with on duty points at Elko, operating to Winnemucca, but not including Winnemucca, shall be operated as part of the Salt Lake City Hub.

6. The operations listed in A 1-4 above, may be implemented separately, in groups or collectively, upon ten (10) days written notice by the Carrier to the General Chairman. Implementation notices governing item (5) above, shall be governed by applicable collective bargaining agreements.

Note 1: While the Sparks-Carlin and Wendel-Carlin pools are not covered in this notice it is understood that they will operate Sparks-Elko and Wendel-Elko and will be paid actual miles when operating trains between these two points pursuant to the current collective bargaining agreements and will be further handled when merger coordinations are handled for that area.

Note 2: The Portola-Elko and Winnemucca-Elko pools shall continue to operate pursuant to the current collective bargaining agreements and will be further handled when merger coordinations are handled for that area.

B. The terms and conditions of the pool operations set forth in Section A shall be the same for all pool freight runs whether run as combined pools or separate pools. The terms and conditions are those of the designated collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth below. The basic Interdivisional Service conditions shall apply to all pool freight service. Each pool shall be paid the actual miles run for service and combination service/deadhead with a minimum of a basic day.

1. **Twenty-Five Mile Zone** - At Salt Lake City, Ogden, Elko, Milford, Grand Junction, Helper, Provo, Green River, Las Vegas, Yermo and Pocatello pool crews may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Crews shall be paid an additional one-half ($\frac{1}{2}$) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours, then they shall be paid on a minute basis.

Example: A Salt Lake City-Milford crew receives their north bound train ten miles south of Milford but within the 25 mile zone limits and runs to Salt Lake. They shall be paid the actual miles established for the Salt Lake-Milford run and an additional one-half basic day for handling the train from the point ten (10) miles south of Milford back through Milford.

Note: Crews receiving their trains on the far side of their terminal but within the Salt Lake-Ogden complex shall be paid under this provision.

2. **Turnaround Service/Hours of Service Relief**. Except as provided in (1) above, turnaround service/hours of service relief at both home and away from home terminals shall be handled by extra boards, if available, prior to setting up other employees. Trainmen used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules. Extra boards may handle this service in all directions out of a terminal that is within the Hub.
3. Nothing in this Section B (1) and (2) prevents the use of other employees to perform work currently permitted by prevailing agreements.

C. Agreement coverage. Employees working in the Salt Lake Hub shall be governed, in addition to the provisions of this Agreement by the UP Agreement covering the Eastern District for both road and yard, including all addenda and side letter agreements pertaining to that agreement, the 1996 National Agreement applicable to Union Pacific and previous National Agreement provisions still applicable. Except as specifically provided herein, the system and national collective bargaining agreements, awards and interpretations shall prevail. None

of the provisions of these agreements are retroactive. Since the employees have not worked under a daily preference system in the yard the employees shall be governed by the regular application system for yard assignments and the daily preference system shall not apply in the Salt Lake Hub.

D. After implementation, the application process will be used to fill all vacancies in the Hub as follows:

1. Prior right vacancies must first be filled by an employee with prior rights to the vacancy who is on a reserve board prior to considering applications from employees who do not have prior rights to the assignment
2. If no prior right applications are received, then the junior dovetailed employee on a reserve board at the location who holds prior rights to the assignment will be forced to the assignment or permitted to exercise seniority to a position held by another employee.
3. If there are no prior right employees on one of the reserve boards covering the vacant prior right assignment, then the senior non prior right applicant will be assigned. If no applications are received then the most junior employee on any of the reserve boards will be recalled and will take the assignment or displace a junior employee. If there are no trainmen on any reserve boards, then the senior furloughed trainman in the Salt Lake Hub shall be recalled to the vacancy. When forcing or recalling, prior rights trainmen shall be forced or recalled to prior right assignments prior to trainmen who do not have prior rights.
4. Non prior right vacancies will be filled by the senior applicant from the dovetail roster. If no applicant then the junior employee on any reserve board in the Hub shall be recalled to the vacancy in accordance with the provisions of the UPED reserve board agreement.

V. EXTRA BOARDS.

A. The following extra boards may be established to protect vacancies and other extra board work in or out of the Salt Lake City/Ogden metro complex or in the vicinity thereof:

1. **Ogden** : One conductor and one brakeman/switchmen (total of two) extra boards to protect the Ogden-Green River Pool, and the Ogden-Elko Pool (if pools are operated separately), the Ogden yard assignments and all road switchers, locals and work trains between Ogden-Green River, Clearfield-McCammon and Ogden-Elko.

2. **Salt Lake North:** One conductor and one brakeman/switchmen (total of two) extra boards to protect the Salt Lake- Pocatello/Green River Pool, the Salt Lake-Elko pool, all Salt Lake Yard assignments and all road switchers, locals and work trains between Salt Lake to Wendover and Salt Lake to Clearfield except work trains may work all the way to Ogden

Note: If the Carrier operates Metro Complex pools to Pocatello/ Green River and Elko then the above extra boards will convert to two sets of extra boards with one set covering east pool freight and one covering west pool freight. The east extra boards will also cover all road switcher, locals, yard assignments and work trains at or between Salt Lake and Pocatello/Green River/Ogden with the west extra board covering these assignments between Ogden/Salt Lake and Elko.

3. **Salt Lake South:** One conductor/brakeman extra board to protect Salt Lake -Milford/Helper/Grand Junction/Provo pool(s) and all road switcher local and work train assignments in this area.

Note: The Carrier may operate more than these extra boards in the Salt Lake Metro complex. When more than these extra boards are operated the Carrier shall notify the General Chairman what area each extra board shall cover. When combining extra boards the Carrier shall give ten (10) days written notice.

B. The Carrier may establish or keep extra boards at points such as Milford, Provo, Helper, Elko, Las Vegas etc to meet the needs of service pursuant to the designated collective bargaining agreement provisions. If there are less than three yard assignments at any of these locations then the extra boards shall be conductor/brakemen/switchmen boards. If at least three yard assignments then the extra boards shall be separated into a conductor board and a brakemen/switchmen board.

C. At any location where both UP and SP/DRGW extra boards exist the Carrier may combine these boards into one board.

D. The Ogden and Salt Lake extra boards shall be filled off the dovetail roster. Extra Boards in prior right areas such as Milford, Las Vegas and Helper shall be filled using prior rights. Extra boards at the dual locations of Provo and Elko shall be filled on a 50/50 basis. At Grand Junction the extra board will be a combination east-west board.

VI. PROTECTION.

The Surface Transportation Board has stated that adversely affected employees shall be covered by New York Dock protection.

VII. IMPLEMENTATION.

A. This implements the merger of the Union Pacific and Southern Pacific railroad operations in the area covered by Notice 19W and any amended notices thereto.

In addition, the parties understand that the overall implementation is being phased in to accommodate the cut over of computer operations, dispatching, track improvements and clerical support.

B. The Carrier shall give 30 days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Employees whose assignments are changed shall be permitted to exercise their new seniority. After the initial implementation the 10 day provisions of the various Articles shall govern.

C. Prior to the movement to reserve boards or transfers outside the Salt Lake Hub, it will be necessary to fill all positions in the Salt Lake Hub.

D. In an effort to provide for employees to follow their work to areas outside the Salt Lake Hub, the Carrier shall advertise vacancies at locations outside the Hub for a period of one year from the implementation date, as long as a surplus of trainmen exist in the Hub, for employees to make application. The dovetail roster shall be used for determining the senior applicant. Should an insufficient number of applications be received then the junior surplus employee shall be forced to the vacancy. Employees who move by application or force shall establish new seniority and relinquish seniority in the Hub.

VIII. CREW CONSIST.

A. Upon implementation of this agreement (award) all crew consist productivity funds that cover employees in the Hub shall be frozen pending payment of the shares to the employees both inside the Hub and outside the Hub. A new productivity fund shall be created on implementation day that will cover those employees in the Salt Lake Hub and the funds that cover employees outside the Hub shall continue for the employees who remain outside the Hub. The Salt Lake Hub employees shall have no interest or share in payments made to those funds after implementation date.

B. Payments into the new productivity fund shall be made in compliance with the UPED crew consist agreement. Those employees who would have participated in the shares of the productivity funds had they originally been hired on the UPED shall be eligible to participate in the distribution of the new fund except as stated in (D) below.

C. Employees who would have been covered under the UPED special allowance provisions had they been hired originally on the UP Eastern District shall be entitled to a special allowance under those provisions except as stated in (D) below.

D. Those employees who sold their special allowances/productivity funds previously are not entitled to those payments under this agreement (award).

E. While the UPED crew consist agreement will govern this Hub the Carrier is not required to place yardmen/brakemen on any local, road switcher, yard or other assignment anywhere in the Hub that is was not required to use under the least restrictive crew consist agreement that previously existed.

IX. FAMILIARIZATION.

A. Employees will not be required to lose time or "ride the road" on their own time in order to qualify for the new operations. Employees will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualifications shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices and local chairmen in implementing this section.

X. FIREMEN

A. This agreement also covers firemen. Pre-October 31, 1985 firemen will only have seniority in the Salt Lake Hub and if unable to work an engineer's assignment or a mandatory firemen's/hostler psotion they shall be permitted to hold a fireman's postion first in their prior rights area and second, using their dovetail seniority.

B. Post October 31, 1985 firemen shall continue to be restricted to mandatory assignments and if unable to hold an engine service postion will be required to exercise their train service seniority in the Hub.

XI. HEALTH AND WELFARE

Employees not previously covered by the UPED agreement shall have 60 days to join the Union Pacific Hospital Association in accordance with that agreement.

QUESTIONS AND ANSWERS -UTU SALT LAKE HUB

Article I - SALT LAKE HUB

- Q1. Does the new seniority district change switching limits at the mile posts indicated?
- A1. No. It is the intent of this agreement to identify the new seniority territory and not to change the existing switching limits except as specifically provided elsewhere in this agreement.
- Q2. Which Hub is Grand Junction in?
- A2. For seniority purposes trainmen are in the Denver Hub, however due to the unique nature of Grand Junction being a home terminal for one Hub and away from home for another Hub, the extra board may perform service on both sides of Grand Junction.
- Q3. What Hub are the Valmy coal assignments in?
- A3. Because they are on duty at Elko and work to or short of Winnemucca, but not including Winnemucca, they are part of the Salt Lake Hub. This is also true of assignments that work out of Carlin but short of Winnemucca.

Article II - SENIORITY AND WORK CONSOLIDATION

- Q4. How long will prior rights rosters be in effect?
- A4. They will lose effect through attrition.
- Q5. Do the OUR&D rosters and agreements survive this merger?
- A.5. No.
- Q.6 It is the intent of Article II B note 4 to operate SLC-Elko and SLC-Grand Junction as one pool?
- A.6 No, each of these pool are now double headed and it is the intent of that note to run each pool as a single headed pool and not combine them with each other.
- Q7. In Article II(G), what does it mean when it refers to protecting all trainmen vacancies within the Hub?
- A7. If a vacancy exists in the Salt Lake Hub, it must be filled by a prior rights employee prior to placing employees on reserve boards. If a non prior rights employee is working in the Salt Lake Hub then a prior rights employee must displace that person prior to prior right trainmen going to a reserve board. If a vacancy exists in a pool and a trainman is on a reserve board that

person will be recalled prior to the carrier using trainmen who do not hold reserve board rights or hiring new trainmen..

- Q8. Will existing pool freight terms and conditions apply on all pool freight runs?
A8. No. The terms and conditions set forth in the controlling collective bargaining agreements and this document will govern.
- Q9. What is the status of an employee who placed in the Hub after November 1, 1996 but prior to the implementation of this Award?
Q9. They shall be placed on the roster using their dovetail date but they shall not have any prior rights.
- Q10. Will an employee gain or lose vacation benefits as a result of the merger?
A10. No.
- Q11. When the agreement is implemented, which vacation agreement will apply?
A11. The vacation agreements used to schedule vacations for 1997 will be used for the remainder of 1997. Thereafter the Eastern District Agreement will govern.
- Q12. If a local operated by a UP Idaho trainman previously went on duty at the UP North Yard now goes on duty at the Roper Yard, does it now operate over more than one seniority district or is it continuing current operations?
A12. Changes in on duty points within a terminal or the travel over other trackage in a terminal does not alone alter the "continue current operations" intent of the Agreement.
- Q13. What is the status of firemen's seniority?
A13. Firemen seniority will be dovetailed in a similar manner as trainmen.

ARTICLE III - TERMINAL CONSOLIDATIONS

- Q14. Are the national road/yard zones covering yard crews measured by the metro complex limits or from the switching limits where the yard assignment goes on duty?
A14. The switching limits where the yard crew goes on duty.
- Q15. If crews go on duty in the Complex short of Ogden, is Ogden part of the initial terminal?
A15. No, it is an intermediate point.

ARTICLE IV - POOL OPERATIONS

- Q16. If the on duty point for the Salt Lake - Green River pool is moved from North Yard to Roper Yard, will the mileage paid be increased?

- A16. Yes. The mileage will be from the center of Roper Yard to Green River.
- Q17. Can you give some examples of work currently permitted by prevailing agreements as referenced in Article IV B 3?
- A17. Yes, yard crews are currently permitted to perform hours of service relief in the road/yard zone established in the National Agreement, ID crews may perform combination deadhead service and road switchers may handle trains that are laid down in their zone.
- Q18. Because of the elimination of Elko as a home terminal for pool service what type of job assignment will the trainmen who remain at Elko protect?
- A18. The Carrier anticipates that for those trainmen who remain in this area, that based on manpower needs, the guaranteed extra board will protect extra locals, branch line work (Valmy coal), yard vacancies, short turnaround service, HOSA relief work and so forth.
- Q19. Will the Carrier change the Las Vegas-Milford pool to a single-headed pool?
- A19. No, not as a result of this merger notice. Article IX of the 1986 National Award would govern any future action.
- Q20. If a crew in the 25 mile zone is delayed in bringing the train into the original terminal so that it does not have time to go on to the far terminal, what will happen to the crew?
- A20. Except in cases of emergency, the crew will be deadheaded on to the far terminal.
- Q21. Is it the intent of this agreement to use crews beyond the 25 mile zone?
- A21. No.
- Q22. In Article IV(B), is the ½ basic day for operating in the 25 mile zone frozen and/or is it a duplicate payment/ special allowance?
- A22. No, it is subject to future wage adjustments and it is not duplicate pay/special allowance.
- Q23. How is a crew paid if they operate in the 25 mile zone?
- A23. If a pre-October 31, 1985 trainman is transported to its train 10 miles south of Milford and he takes the train to Salt Lake and the time spent is one hour south of Milford and 9 hours 17 minutes between Milford and Salt Lake with no initial or final delay earned, the employee shall be paid as follows:
- A. One-half basic day for the service South of Milford because it is less than four hours spent in that service.
 - B. The road miles between Salt Lake and Milford (207).
 - C. One hour overtime because the agreement provides for overtime after 8 hours 17 minutes on the road trip between Salt Lake and Milford. (207 miles divided by 25 = 8'17")

- Q24. Would a post October 31, 1985 trainman be paid the same?
- A24. No. The National Disputes Committee has determined that post October 31, 1985 trainmen come under the overtime rules established under the National Agreements/Awards/Implementing Agreements that were effective after that date for both pre-existing runs and subsequently established runs. As such, the post October 31, 1985 trainman would not receive the one hour overtime in C above but receive the payments in A & B.
- Q25. How will initial terminal delay be determined when performing service as outlined above?
- A25. Initial terminal delay for crews entitled to such payments will be governed by the applicable collective bargaining agreement and will not commence when the crew operates back through the on duty point. Operation back through the on duty point shall be considered as operating through an intermediate point.
- Q26. What does "at the location" mean in Article IV D 2?
- A26. This is a geographical term that forces junior employees in the general location to a vacancy rather than someone much farther away.
- Q27. Is the identification of the UP Eastern District collective bargaining agreement in Article IV(C) a result of collective bargaining or selection by the Carrier?
- A27. Since UP purchased the SP system the Carrier selected the collective bargaining agreement to cover this Hub.
- Q28. When the UP Eastern District agreement becomes effective what happens to existing claims filed under the other collective bargaining agreements that formerly existed in the Salt Lake Hub?
- A28. The existing claims shall continue to be handled in accordance with those agreements and the Railway Labor Act. No new claims shall be filed under those agreements once the time limit for filing claims has expired for events that took place prior to the implementation date.
- Q29. In Article IV(D), if no applications are received for a vacancy on a prior rights assignment, does the prior right trainman called to fill the vacancy have the right to displace a junior prior right trainman from another assignment?
- A29. Yes. That trainman has the option of exercising his/her seniority to another position held by a junior prior right employee, within the time frame specified in the controlling collective bargaining agreement, or accepting the force to the vacancy.

ARTICLE V - EXTRA BOARDS

Q30. How many extra boards will be combined at implementation?

A30. It is unknown at this time. The Carrier will give written notice of any consolidations whether at implementation or thereafter.

Q31. Are these guaranteed extra boards?

A31. Yes. The pay provisions and guarantee offsets and reductions will be in accordance with the existing UPED guaranteed extra board agreement.

ARTICLE VI - PROTECTION

Q32. What is loss on sale of home for less than fair value?

A32. This refers to the loss on the value of the home that results from the Carrier implementing this merger transaction. In many locations the impact of the merger may not affect the value of a home and in some locations the merger may affect the value of a home.

Q33. If the parties cannot agree on the loss of fair value what happens?

A33. New York Dock Article I, Section 12(d) provides for a panel of real estate appraisers to determine the value before the merger announcement and the value after the merger transaction.

Q34. What happens if an employee sells a \$50,000 home for \$20,000 to a family member?

A34. That is not a bona fide sale and the employee would not be entitled to a New York Dock payment for the difference below the fair value.

Q35. What is the most difficult part of New York Dock in the sale transaction?

A35. Determine the value of the home before the merger transaction. While this can be done through the use of professional appraisers, many people think their home is valued at a different amount.

Q36. Who is required to relocate and thus eligible for the allowance?

A36. An employee who can no longer hold a position at his/her location and must relocate to hold a position as a result of the merger. This excludes employees who are borrow outs or forced to a location and released.

Q37. Are there mileage components that govern the eligibility for an allowance?

A37. Yes, the employee must have a reporting point farther than his/her old reporting point and at least 30 miles between the current home and the new reporting point and at least 30 miles between reporting points.

Q38. Can you give some examples?

A38. The following examples would be applicable.

Example 1: Employee A lives 80 miles north of Salt Lake and works a yard assignment at Salt Lake. As a result of the merger he/she is assigned to a road switcher with an on duty point 20 miles north of Salt Lake. Because his new reporting point is closer to his place of residence no relocation benefits are allowable.

Example 2: Employee B lives 35 miles north of Salt Lake and goes on duty at the UP yard office in Salt Lake. As a result of the merger he/she goes on duty at the SP yard office which is six miles away. No relocation benefits are allowable.

Example 3: Employee C lives in Elko and is unable to hold an assignment at that location and places on an assignment at Salt Lake. The employee meets the requirement for relocation benefits.

Example 4: Employee D lives in Salt Lake and can hold an assignment in Salt Lake but elects to place on a Road Switcher 45 miles north of Salt Lake. Because the employee can hold in Salt Lake no relocation benefits are allowable.

Q39. Are there any restrictions on routing of traffic or combining assignments after implementation?

A39. There are no restrictions on the routing of traffic in the Salt Lake Hub once the 30 day notice of implementation has lapsed. There will be a single collective bargaining agreement and limitations that currently exist in that agreement will govern (e.g. radius provisions for road switchers, road/yard moves etc.). However, none of these restrictions cover through freight routing. The combining of assignments are covered in this agreement.

Article VIII - IMPLEMENTATION

Q40. On implementation will all trainmen be contacted concerning job placement?

A40. No, the implementation process will be phased in and employees will remain on their assignments unless abolished or combined and then they may place on another assignment or on a reserve board depending on their seniority rights. The new seniority rosters will be available for use by employees who have a displacement.

Q41. How will the new extra boards be created?

A41. When the Carrier gives notice that the current extra boards are being abolished and new ones created in accordance with the merger agreement, the Carrier will advise the number of assignments for each extra board and the effective date for the new extra board. The trainmen will have at least ten days to make application to the new extra board and the dovetail roster

will be used for assignment to the Board. It is anticipated that the extra boards will have additional trainmen added at first to help with the familiarization process.

Q42. Will the Carrier transfer all surplus employees out of the Hub?

A42. No. The Carrier will retain some surplus to meet anticipated attrition and growth, however, the number will be determined by the Carrier.

Q43. When will reserve boards be established and under what conditions will they be governed?

A43. When reserve boards are established they will be governed by the current reserve board agreement covering the UP Eastern District.

GENERAL

Q44. Do the listing of mileposts in Article I mean that those are the limits that employees may work?

A44. No, the mile posts reflect a seniority district and in some cases assignments that go on duty in the new seniority district will have away from home terminals outside the seniority district which is common in many interdivisional runs.

Q45. If the milepost is on the east end of Yermo can the crew perform any work in the station of Yermo west of the mile post?

A45. Yes, Yermo is the away from home terminal and the crew may perform any work that is permissible under the Eastern District collective bargaining agreement as the crew does now under its current agreement. If a yard assignment is established it will not be filled by employees from the Salt Lake Hub

Q46. Will all pool freight be governed by the same rules?

A46. Yes, all pool freight will be governed by the UPED interdivisional rules, such as but not limited to, initial terminal delay, overtime, \$1.50 in lieu of eating en route.

Q47. Will all employees be paid the same?

A47. No, the current rules differ between pre and post October 31, 1985 employees with regards to such items as entry rates, duplicate payments and overtime. Since those are part of the National Agreements that supersede local rules they will continue to apply as they have applied on the UPED prior to the merger.

Q48. What will the miles paid be for the runs?

A48. Actual miles between terminals with a minimum of a basic day as determined by the National Agreement.

**MERGER IMPLEMENTING AGREEMENT
(Denver Hub)**

between the

**UNION PACIFIC/MISSOURI PACIFIC RAILROAD COMPANY
SOUTHERN PACIFIC TRANSPORTATION COMPANY**

and the

UNITED TRANSPORTATION UNION

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP"). In approving this transaction, the STB imposed New York Dock labor protective conditions.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all employees working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement,

IT IS AGREED:

I. Denver Hub

A new seniority district shall be created that encompasses the following area: UP milepost 429.7 at Sharon Springs, Kansas; UP milepost 511.0 at Cheyenne, Wyoming ; DRGW milepost 451.7 at Grand Junction, Colorado and milepost 251.7 at Alamosa, Colorado; SSW milepost 545.4 at Dalhart, Texas and UP milepost 732.1 at Horace, Kansas and all stations, branch lines, industrial leads and main line between the points identified.

II. Seniority and Work Consolidation.

The following seniority consolidations will be made:

A. A new seniority district will be formed and master Seniority Rosters, UP/UTU Denver Hub, will be created for the employees working as Conductors, Brakemen, yardmen (the term yardman shall, in this agreement, refer to all yard positions including foreman, helper, utility man, herder and switch tender) and Firemen in the Denver Hub on November

1, 1996. (The term "trainmen" is used hereafter as a generic term to include all UTU-C,T&Y represented employees and where applicable all UTU-E represented employees). The four new rosters will be created as follows:

1. Switchmen/brakemen placed on these rosters will be dovetailed based upon the employee's current seniority date. If this process results in employees having identical seniority-dates, seniority will be determined by the employee's current hire date with the Carrier.
2. Conductors placed on these rosters will be dovetailed based upon the employee's actual promotion date into the craft. If this process results in employees having identical seniority dates, seniority will be determined by the employee's current hire date with the Carrier.

Prior Rights to Zones, Example (assumes only has 5 people on roster):

Name	Roster Ranking	Zone 1 (Denver Terminal, Denver-Axial/Bond/ to Sharon Springs/Cheyenne excluding Sharon Springs & Cheyenne yard/local/road switchers, Pueblo-Horace) [UPED,MPUL Pueblo roster,DRGW]	Zone 2 (Grand Junction/Denver/Bond/Montrose/Oliver/Mintum) [DRGW]	Zone 3 (Pueblo-Denver/S.Fork/Mintum/ to Delhart, excluding Delhart) [DRGW]
JONES, A.	#1	X		
SMITH, B.	#2	X		
ADAMS, C.	#3			X
BAILEY, D.	#4		X	
GREEN, E.	#5			X

3. All employees placed on the roster may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this Agreement.

4. New employees hired and placed on the new rosters on or after November 1, 1996, will have no prior rights but will have roster seniority rights in accordance with the zone and extra board provisions set forth in this Agreement.

B. The new UP/UTU seniority districts will be divided into the following three (3) Zones:

1. Zone 1 will include Denver east to but not including Sharon Springs and the Oakley extra board, Denver north to but not including Cheyenne, Denver west to and including Bond and Axial, Pueblo east to Horace, and all road and yard

operations within the Denver Terminal including any road switchers at Colorado Springs.

Note: The Oakley extra board is part of the Denver Hub and assignments at Oakley will be filled by the Denver Hub. The reference to Sharon Springs is for pool freight service and the work normally protected by the oakley extra board shall continue as part of the Denver Hub.

2. **Zone 2** will include Grand Junction to Denver (long pool only), Grand Junction to Montrose, Oliver, Minturn (not including Minturn helper service) and Bond and yard assignments.

3. **Zone 3** will include Pueblo to Denver, South Fork, Minturn and to Dalhart not including Dalhart, but including Minturn helper service and yard assignments.

4. Road, road/yard or yard extra boards will not be part of any zone if they cover assignments in more than one zone. Extra boards that cover assignments in only one zone will be governed by zone rules and the current rules of the collective bargaining agreement for this Hub.

C. Trainmen initially assigned to the new rosters will be accorded prior rights to one of the three zones based on the following:

1. **Zone 1** -Trainmen assigned to rosters on the former Union Pacific Eastern District 12th District, MPUL Pueblo trainmen and DRGW employees working positions within the points specified for this Zone on November 1, 1996.

2. **Zone 2** -Trainmen assigned to rosters on the former DRGW, working positions within the points specified for this Zone on November 1, 1996.

3. **Zone 3** -Trainmen assigned to rosters on the former DRGW, working positions within the points specified for this Zone on November 1, 1996.

D. Trainmen hired and assigned to the merged roster after implementation shall be assigned to a zone, but without prior rights, based on the Carrier's determination of the demands of service at that time in the Denver Hub.

E. The purpose of creating zones is twofold: First it is to provide seniority in an area that an employee had some seniority prior to the merger, or contributed some work after the merger, unless that trackage is abandoned, and thus preference to some of their prior work over employees in other zones; Second to provide a defined area of trackage and train operations that an employee can become familiar so as not to be daily covering a multitude of different sections of track. As such the following will govern:

1. Trainmen will be allowed to make application for an assignment in a different zone as vacancies arise. If reduced from the working list in their zone, trainmen may exercise their common seniority in the remaining two zones.

2. Trainmen may not hold a reserve board outside their zone. The current collective bargaining agreement is amended to provide for a reserve board for each zone.

3. Trainmen with a seniority date prior to February 1, 1992 shall be permitted to hold a reserve board in their zone. Trainmen holding a seniority date subsequent to February 1, 1992 must be displaced prior to employees being permitted to hold a reserve board position.

F. It is understood that certain runs home terminated in the Denver Hub will have away from home terminals outside the Hub and that certain runs home terminated outside the Hub will have away from home terminals inside the Hub. Examples are Denver to Cheyenne and Pueblo to Dalhart. It is not the intent of this agreement to create seniority rights that interfere with these operations or to create double headed pools. For example, Denver will continue to be the home terminal for Denver-Cheyenne runs and Cheyenne will not have equity in these runs. The Denver-Rawlins run currently has no employees assigned to it. If this operation is reestablished at a later date the current Denver-Rawlins pool agreement will continue to apply with Denver as the home terminal.

G. All vacancies within the zones must be filled prior to any trainmen being reduced from the working list or prior to trainmen being permitted to exercise to any reserve board.

H. With the creation of the new seniority district all previous seniority outside the Denver Hub held by trainmen on the new rosters shall be eliminated and all seniority inside the Hub held by trainmen outside the Hub shall be eliminated.

I. Trainmen will be treated for vacation and payment of arbitraries as though all their service on their original railroad had been performed on the merged railroad.

J. Trainmen who have been promoted to Engine service and hold engine service seniority inside the Denver Hub and working therein on November 1, 1996, shall be placed on the appropriate roster(s) using their various trainmen seniority dates. Those Engine service employees, if any, who do not have a train service date in the Denver Hub shall be given one in accordance with the October 31, 1985 UTU National Agreement.

III. Terminal Consolidations

The following terminal consolidations will be implemented in accordance with the following provisions:

A. Denver Terminal

1. The existing switching limits at Denver will now include Denver Union Terminal north to and including M.P. 6.24 and M.P. 6.43 on the Dent Branch, south to and including M.P. 5.5, east to and including M.P. 635.10, and west to and including M.P. 7.5. Yard crews currently perform service on the Boulder Branch and they may continue to do so after implementation of this agreement in accordance with existing agreements.

Note: The intent of this section is to combine the two Carrier's facilities into a common terminal and not to extend the switching limits beyond the current established points.

2. All UP and SP operations within the greater Denver area shall be consolidated into a unified terminal operation.

3. All road crews may receive/leave their trains at any location within the boundaries of the new Denver terminal and may perform work anywhere within those boundaries pursuant to the applicable collective bargaining agreements. The Carrier will designate the on/off duty points for road crews with the on/off duty points having appropriate facilities for inclement weather and other facilities as currently required in the collective bargaining agreement.

4. All rail lines, yards, and/or sidings within the new Denver terminal will be considered as common to all crews working in, into and out of Denver. All crews will be permitted to perform all permissible road/yard moves pursuant to the applicable collective bargaining agreements. Interchange rules are not applicable for intra-carrier moves.

B. General Conditions for Terminal Operations

1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1985 and 1991 National Awards and implementing agreements.

2. Employees will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the October 31, 1996 National Agreement.

3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service zone, shall continue to apply. Yard crews at Denver, Grand Junction and Pueblo may perform such service in all directions out of the terminal.

Note: Items 1 through 3 are not intended to expand or restrict existing rules

IV. Pool Operations.

A. The following pool consolidations may be implemented to achieve efficient operations in the Denver Hub:

1. All Grand Junction-Denver/Bond and Grand Junction-Minturn pool operations shall be combined into one pool with Grand Junction as the home terminal. Denver may have one, two or three pools, Denver-Phippsburg/Bond, Denver-Cheyenne, and Denver-Sharon Springs with the Carrier determining whether to combine the pools. Short pool operations when run shall be between Grand Junction-Bond and Denver-Bond.

2. All Pueblo-Denver and Pueblo-Dalhart pool operations shall be combined into one pool with Pueblo as the home terminal. The Pueblo-Alamosa local shall remain separate but Pueblo-Alamosa traffic may be combined with the Pueblo-Dalhart and Pueblo-Denver pool if future traffic increases result in pool operations. The Pueblo-Minturn pool shall remain separate until the number of pool turns drops below ten (10) due to the cessation of service on portions of that line, at that time, the Carrier may combine it with the remaining Pueblo pool. The Pueblo-Horace pool shall remain separate until terminated with the abandonment of portions of that line. The tri-weekly local provisions shall apply until abandonment of any portion of the line east of Pueblo where Pueblo crews now operate.

3. Pool, local, road switcher and yard operations not covered in the above originating at Grand Junction shall continue as traffic volumes warrant.

4. Helper service at Minturn shall remain separate until terminated with the cessation of service on portions of the line where the helpers operate.

5. Any pool freight, local, work train or road switcher service may be established to operate from any point to any other point within the new Seniority District with the on duty point within one of the zones.

6. The operations listed in A 1-4 above, may be implemented separately, in groups or collectively upon ten (10) days written notice from the Carrier to the General Chairman. Implementation notices covering item (5) above, shall be governed by applicable collective bargaining agreements.

7. Power plants between Denver and Pueblo may be serviced by either Pueblo-Denver pool or the Denver Extra board or a combination thereof. The Denver extra board shall be used first and if exhausted, the pool crew will be used and deadheaded home after completion of service.

B. The terms and conditions of the pool operations set forth in Section A shall be the same for all pool freight runs whether run as combined pools or separate pools. The terms and conditions are those of the designated collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth below. The basic Interdivisional Service conditions shall apply to all pool freight service. Each pool shall be paid the actual miles run for service and combination service/deadhead with a minimum of a basic day.

1. **Twenty-Five mile Zone** - At Grand Junction, Pueblo, Sharon Springs, Denver, Cheyenne and Dalhart, pool crews may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Crews shall be paid an additional one-half ($\frac{1}{2}$) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours then they shall be paid on a minute basis.

Example: A Pueblo-Denver crew receives their north bound train ten miles south of the Pueblo terminal but within the 25 mile terminal zone limits and runs to Denver. They shall be paid the actual miles established for the Pueblo-Denver run and an additional one-half basic day for handling the train from the point ten (10) miles south of the Pueblo terminal.

2. **Turnaround Service/Hours of Service Relief** - Except as provided in (1) above, turnaround service and Hours of Service Relief at both home and away from home terminals shall be handled by extra boards, if available, prior to setting up other employees. Trainmen used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules. Extra boards may perform this service in all directions out of their home terminal within the Hub.

Note: Due to qualification issues at Minturn the pool crews will continue to perform Hours of Service relief at this location.

3. Nothing in this Section B (1) and (2) prevents the use of other trainmen to perform work currently permitted by prevailing agreements.,

C. Agreement Coverage - Employees working in the Denver Hub shall be governed, in addition to the provisions of this Agreement, by the Agreement between the Union Pacific Railroad Company and the UTU Union Pacific Eastern District, both road and yard, including all addenda and side letter agreements pertaining to that agreement, the 1996 National Agreement applicable to Union Pacific and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein, the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. Since most of the employees have not worked under a daily preference system in the yard the employees shall be governed by the regular application system for yard assignments and the daily preference system shall not apply in the Denver Hub.

D. After implementation, the application process will be used to fill all vacancies in the Hub as follows:

1. Prior right vacancies must first be filled by an employee with prior rights to the vacancy who is on a reserve board prior to considering applications from employees who do not have prior rights to the assignment including those in other zones within the Denver Hub. A reserve board employee will be recalled prior to considering applications from employees who do not have prior rights to the assignment.
2. If there are no prior right employees on the reserve board covering the vacant prior right assignment then the senior applicant without prior rights to the vacancy will be assigned. If no applications are received then the most junior employee on any of the other reserve boards will be recalled and will take the assignment or displace a junior employee. If there are no trainmen on any reserve board, then the senior furloughed trainman in the Denver Hub shall be recalled to the vacancy. When forcing or recalling, prior rights trainmen shall be forced or recalled to prior right assignments prior to trainmen who do not have prior rights.
3. Non prior right vacancies will be filled by the senior applicant from the dovetail roster. If no applicant then the junior employee on any reserve board in the Hub shall be recalled to the vacancy in accordance with the provisions of the UPED reserve board agreement.

V. EXTRA BOARDS

A. The following road/yard extra boards may be established to protect trainmen assignments as follows:

1. **Denver** - One conductor and one brakeman/switchman (total of 2) extra boards to protect the Denver-Cheyenne, Denver-Sharon Springs and Denver-Phippsburg and Denver-Bond pools, the Denver yard assignments and all road switchers, locals and work trains originating within these territories and extra service to any power plant and other extra board work.
2. **Pueblo** - One conductor and one brakeman/switchman (total of 2) extra boards to protect the Pueblo-Denver, Pueblo- Alamosa, Pueblo-Minturn and Pueblo-Dalhart pool operations, Pueblo Yard assignments and all road switchers, locals and work trains and other extra board work originating within the these territories. The MPUL extra board shall remain separate and shall be phased out with the Pueblo-Horace pool operations.
3. **Grand Junction** - One conductor and one brakeman/switchman (total of 2) extra boards to protect Grand Junction-Denver, Grand Junction-Bond and Grand Junction-Minturn pool(s), Grand Junction yard, road switcher, local and work train assignments and other extra board work originating within these territories. Since the extra board at Grand Junction is at a point joining two hubs, it may protect work up to but not including Helper, Utah.

Note: At each of the above locations the Carrier may operate more than these extra boards. When more than these extra board is operated the Carrier shall notify the General Chairman what area each extra board shall cover. When combining extra boards the Carrier shall give ten (10) days written notice.

B. The Carrier may establish extra boards at outside points to meet the needs of service pursuant to the designated collective bargaining agreement provisions. Extra boards at outside points such as Phippsburg may continue.

C. At any location where both UP and DRGW extra boards exist the Carrier may combine these boards into one board. If at any location there are less than three yard assignments then the extra boards referred to in A, B or C above shall be combined into a single Conductor/brakemen/switchmen extra board.

VI. PROTECTION

The Surface Transportation Board has stated that adversely affected employees shall be covered by New York Dock protection.

VII. HEALTH AND WELFARE

Employees not previously covered by the UPED agreement shall have 60 days to join the Union Pacific Hospital Association in accordance with that agreement.

VIII. IMPLEMENTATION

A. The Parties have entered into this agreement to implement the merger of the Union Pacific Railroad and Southern Pacific Railroad operations in the area covered by Notice 18W and any amended notices thereto.

In addition, the Parties understand that the overall operational implementation is being phased in to accommodate the cut over of computer operations, dispatching, track improvements and clerical support.

B. The Carrier shall give thirty (30) days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Employees whose assignments are changed shall be permitted to exercise their new seniority. After the initial implementation the 10 day provisions of Article IV(A)(6) and Article V(A) (note) shall govern.

C. Prior to movement to reserve boards or transfers outside the Hub, it will be necessary to fill all positions in the Denver Hub..

D. In an effort to provide for employees to follow their work to areas outside the Denver Hub, the Carrier shall advertise vacancies at locations outside the Hub for a period of one year from the implementation date, as long as a surplus of trainmen exist in the Hub, for employees to make application. The dovetail roster shall be used for determining the senior applicant. Should an insufficient number of applications be received then the junior surplus employee shall be forced to the vacancy. Employees who move by application or force shall establish new seniority and relinquish seniority in the Hub.

IX. CREW CONSIST.

A. Upon implementation of this agreement (award) all crew consist productivity funds that cover employees in the Hub shall be frozen pending payment of the shares to the employees both inside the Hub and outside the Hub. A new productivity fund shall be created on implementation day that will cover those employees in the Denver Hub and the funds that cover employees outside the Hub shall continue for the employees who remain outside the Hub. The Denver Hub employees shall have no interest or share in payments made to those funds after implementation date.

B. Payments into the new productivity fund shall be made in compliance with the UPED crew consist agreement. Those employees who would have participated in the shares of the productivity funds had they originally been hired on the UP Eastern District shall be eligible to participate in the distribution of the new fund except as stated in (D) below.

C. Employees who would have been covered under the UPED special allowance provisions had they been hired originally on the UP Eastern District shall be entitled to a special allowance under those provisions except as stated in (D) below.

D. Those employees who sold their special allowances/productivity funds previously are not entitled to those payments under this agreement (award).

E. While the UPED crew consist agreement will govern this Hub the Carrier is not required to place yardmen/brakemen on any local, road switcher, yard or other assignment anywhere in the Hub that is was not required to use under the least restrictive crew consist agreement that previously existed in either the Salt Lake or Denver Hub.

X. Familiarization

A. Employees will not be required to lose time or "ride the road" on their own time in order to qualify for the new operations. Employees will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualifications shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of operating practices and local chairmen in implementing this section.

XI. Firemen.

A. This agreement also covers firemen. Pre-October 31, 1985 firemen will only have seniority in the Denver Hub and if unable to work an engineer's assignment or a mandatory firemen's/hostler position they shall be permitted to hold a fireman's position first in their prior rights zone and second, using their dovetail seniority.

B. Post October 31, 1985 firemen shall continue to be restricted to mandatory assignments and if unable to hold an engine service position will be required to exercise their train service seniority in the Hub.

QUESTIONS & ANSWERS -UTU DENVER HUB

Article I - DENVER HUB

- Q1. Does the new seniority district change terminal limits at the mile posts indicated?
- A1. No. It is the intent of this agreement to identify the new seniority territory and not to change the existing terminal limits except as specifically provided elsewhere in this agreement.
- Q2. Which Hub is Grand Junction in?
- A2. For seniority purposes trainmen are in the Denver Hub, however due to the unique nature of Grand Junction being a home terminal for one Hub and away from home for another Hub, the extra board may perform service on both sides of Grand Junction.

Article II - SENIORITY AND WORK CONSOLIDATION

- Q3. What is the status of an employee who placed in the Hub after November 1, 1996 but prior to the implementation of this Award?
- A3. They shall be placed on the roster using their dovetail date but they shall not have any prior rights.
- Q4. What happens if employees still have the same seniority date based on the current hire date?
- A4. The UPED agreement has a provision for determining the seniority date under these conditions and that agreement will govern.
- Q5. Why do the zones appear to overlap?
- A5. Zones indicate a given area depending on the on duty point of an assignment. For example, for long pool service, Grand Junction is the proper zone for Grand Junction- Denver service. For short pool service Grand Junction is the zone for going to Bond and Denver is the proper zone for going Denver-Bond
- Q6. In Article II(G), what does it mean when it refers to protecting all vacancies within a zone?
- A6. If a vacancy exists in a zone, it must be filled by a prior rights employee prior to placing employees on reserve boards. If a non prior rights employee is working in a zone then a prior rights employee must displace that person prior to going to a reserve board. If a vacancy exists in one zone and an employee in another zone is on a reserve board that person will be recalled prior to the Carrier hiring additional trainmen.

- Q7. Will existing pool freight terms and conditions apply on all pool freight runs?
A7. No. The terms and conditions set forth in the controlling collective bargaining agreement and this document will govern.
- Q8. Will an employee gain or lose vacation benefits as a result of the merger?
A8. No.
- Q9. When the agreement is implemented, which vacation agreement will apply?
A9. The vacation agreements used to schedule vacations for 1997 will be used for the remainder of 1997. Thereafter the UPED agreement will govern.
- Q10. What is the status of firemen's seniority?
A10. Firemen seniority will be dovetailed in a similar manner as trainmen.

Article III - TERMINAL CONSOLIDATIONS

- Q11. If a yard job goes on duty in the previous UP yard what are the switching limits for performing work in the road/yard zone west of Denver?
A11. DRGW M.P. 7.5 will be used for all yard crews on duty in Denver.

Article IV - POOL OPERATIONS

- Q12. If the on duty point for the Denver-Cheyenne pool is moved from Denver Union Terminal to the DRGW Yard, will the mileage paid be increased?
A12. Yes. The mileage will be from the center of DRGW Yard to Cheyenne.
- Q13. In Article IV A 6 how would other operations be established?
A13. The controlling collective bargaining agreements would govern. For example ID service would be covered under Article IX of the 1985 National Agreement, road switchers can be established at any location under the local road switcher agreement.
- Q14. In Article IV(B) Section 3 provides that the Carrier has the right to perform work currently permitted by other agreements, can you give some examples?
A14. Yes, yard crews are currently permitted to perform hours of service relief in the road/yard zone established in the National Agreement, ID crews may perform combination deadhead/service and road switchers may handle trains that are laid down in their zone.
- Q15. If a crew in the 25 mile zone is delayed in bringing the train into the original terminal so that it does not have time to go on to the far terminal, what will happen to the crew?
A15. Except in cases of emergency, the crew will be deadheaded on to the far terminal.

- Q16. Is it the intent of this agreement to use crews beyond the 25 mile zone?
A16. No.
- Q17. In Article IV(B), is the ½ basic day for operating in the 25 mile zone frozen and/or is it a duplicate payment/special allowance?
A17. No, it is subject to future wage adjustments and it is not duplicate pay/special allowance.
- Q18. How is a crew paid if they operate in the 25 mile zone?
A18. If a pre-October 31, 1985 trainman is transported to its train 10 miles east of Sharon Springs and he takes the train to Denver and the time spent is one hour east of Sharon Springs and 9 hours 24 minutes between Sharon Springs and Denver with no initial or final delay earned, the employee shall be paid as follows:
- A. One-half basic day for the service east of Sharon Springs because it is less than four hours spent in that service.
 - B. The road miles between Sharon Springs and Denver.
 - C. One hour overtime because the agreement provides for overtime after 8 hours 24 minutes on the road trip between Sharon Springs and Denver. (210 miles divided by 25 = 8'24")
- Q19. Would a post October 31, 1985 trainman be paid the same?
A19. No. The National Disputes Committee has determined that post October 31, 1985 trainmen come under the overtime rules established under the National Agreements/Awards/Implementing Agreements that were effective after that date for both pre-existing runs and subsequently established runs. As such, the post October 31, 1985 trainman would not receive the one hour overtime in C above but receive the payments in A & B.
- Q20. How will initial terminal delay be determined when operating in the Zone?
A20. Initial terminal delay for crews entitled to such payments will be governed by the applicable collective bargaining agreement and will not commence when the crew operates back through the on duty point. Operation back through the on duty point shall be considered as operating through an intermediate point.
- Q21. When the UPED agreement becomes effective what happens to existing DRGW/MPUL claims?
A21. The existing claims shall continue to be handled in accordance with the DRGW/MPUL Agreements and the Railway Labor Act. No new claims shall be filed under that agreement once the time limit for filing claims has expired.
- Q22. Is the identification of the UPED collective bargaining agreement in Article IV© a result of collective bargaining or selection by the Carrier?
A22. Since UP purchased the SP system the Carrier selected the collective bargaining agreement to cover this Hub.

- Q23. In Article IV (D), if no applications are received for a vacancy on a prior rights assignment, does the prior right trainman called to fill the vacancy have the right to displace a junior trainman from another assignment?
- A23. Yes. That trainman has the option of exercising his/her seniority to another position held by a junior employee, within the time frame specified in the controlling collective bargaining agreement, or accepting the force to the vacancy.

Article V - EXTRA BOARDS

- Q24. How many extra boards will be combined at implementation?
- A24. It is unknown at this time. The Carrier will give written notice of any consolidations whether at implementation or thereafter.
- Q25. Are these guaranteed extra boards?
- A25. Yes. The pay provisions and guarantee offsets and reductions will be in accordance with the existing UPED guaranteed extra board agreement.

ARTICLE VI - PROTECTION

- Q26. What is loss on sale of home for less than fair value?
- A26. This refers to the loss on the value of the home that results from the carrier implementing this merger transaction. In many locations the impact of the merger may not affect the value of a home and in some locations the merger may affect the value of a home.
- Q27. If the parties cannot agree on the loss of fair value what happens?
- A27. New York Dock Article I Section 12 (d) provides for a panel of real estate appraisers to determine the value before the merger announcement and the value after the merger transaction.
- Q28. What happens if an employee sells a \$50,000 home for \$20,000 to a family member?
- A28. That is not a bona fide sale and the employee would not be entitled to a New York Dock payment for the difference below the fair value.
- Q29. What is the most difficult part of New York Dock in the sale transaction?
- A29. Determine the value of the home before the merger transaction. While this can be done through the use of professional appraisers, many people think their home is valued at a different amount.
- Q30. Who is required to relocate and is thus eligible for the New York Dock benefit?
- A30. An employee who can no longer hold a position at his/her location and must relocate to hold a position as a result of the merger. This excludes employees who are borrow outs or forced to a location and released.

Q31. Are there mileage components that govern the eligibility for an allowance?
A31. Yes, the employee must have a reporting point farther than his/her old reporting point and at least 30 miles between the current home and the new reporting point and at least 30 miles between reporting points.

Q32. Can you give some examples?
A32. The following examples would be applicable.

Example 1: Employee A lives 80 miles north of Denver and works a yard assignment at Denver. As a result of the merger he/she is assigned to a road switcher with an on duty point 20 miles north of Denver. Because his new reporting point is closer to his place of residence no relocation benefits are allowable.

Example 2: Employee B lives 35 miles north of Denver and goes on duty at the UP yard office in Denver. As a result of the merger he/she goes on duty at the DRGW yard office which is four miles away. No relocation benefits are allowable.

Example 3: Employee C lives in Pueblo and is unable to hold an assignment at that location and is placed in Zone 1, where a shortage exists, and places on an assignment at Denver. The employee meets the requirement for relocations benefits.

Example 4: Employee D lives in Denver and can hold an assignment in Denver but elects to place on a Road Switcher 45 miles north of Denver. Because the employee can hold in Denver, no relocation benefits are allowable.

Article VII-HEALTH AND WELFARE

Q33. Must employees not covered under the UP Hospital Association join after the merger?
A33. Yes because it is part of the UPED UTU collective bargaining agreement.

Article VIII - IMPLEMENTATION

Q34. Are there any restrictions on routing of traffic or combining assignments after implementation?
A34. There are no restrictions on the routing of traffic in the Denver Hub once the 30 day notice of implementation has lapsed. There will be a single collective bargaining agreement and limitations that currently exist in that agreement will govern, e.g., radius provisions for road switchers, road/yard moves etc. However, none of these restrictions cover through freight routing. The combining of assignments is covered in this agreement.

- Q35. On implementation will all trainmen be contacted concerning job placement?
- A35. No, the implementation process will be phased in and employees will remain on their assignments unless abolished or combined and then they may place on another assignment or on the protection board depending on surplus. see Article VIII(B). The new seniority rosters will be available for use by employees who have a displacement.
- Q36. How will the new extra boards be created?
- A36. When the Carrier gives notice that the current extra boards are being abolished and new ones created in accordance with the merger agreement, the Carrier will advise the number of assignments for each extra board and the effective date for the new extra board. The employees will have at least ten days to make application to the new extra board and the dovetail roster will be used for assignment to the Board. It is anticipated that the extra boards will have additional engineers added at first to help with the familiarization process.
- Q37. Will the Carrier transfer all surplus employees out of the Hub?
- A37. No. The Carrier will retain some surplus to meet anticipated attrition and growth, however, the number will be determined by the Carrier.
- Q38. When will reserve boards be established and under what conditions will they be governed?
- A38. They will be established in each zone at implementation. When reserve boards are established, they will be governed by the current agreement covering the UPED trainman at Denver.

Article IX- CREW CONSIST

- Q39. When this award is implemented will the productivity funds be paid out at that time?
- A39. No, the number of credits that each employee, who will be in the Hub, has earned will be determined and frozen for the pre-existing fund. They will then start earning credits in the new fund. Those employees not in the Hub will continue to earn credits in their old fund.

GENERAL

- Q40. Do the listing of mileposts in Article I mean that those are the limits that employees may work?
- A40. No, the mile posts reflect a seniority district and in some cases assignments that go on duty in the new seniority district will have away from home terminals outside the seniority district which is common in many interdivisional runs.

- Q41.** If the milepost is on the west end of Sharon Springs can the crew perform any work in the station of Sharon Springs east of the mile post?
- A41.** Yes, Sharon Springs is the away from home terminal and the crew may perform any work that is permissible under the Eastern District collective bargaining agreement. If a yard assignment is established it will not be filled by employees from the Denver Hub
- Q42.** Will all pool freight be governed by the same rules?
- A42.** Yes, all pool freight will be governed by the UPED interdivisional rules, such as but not limited to, initial terminal delay, overtime, \$1.50 in lieu of eating en route.
- Q43.** Will all employees be paid the same?
- A43.** No, the current rules differ between pre and post October 31, 1985 employees with regards to such items as duplicate payments and overtime. Since those are part of the National Agreements that supersede local rules they will continue to apply as they have applied on the UPED prior to the merger.
- Q44.** What will the miles paid be for the runs?
- A44.** Actual miles between terminals with a minimum of a basic day as determined by the National Agreement.

SERVICE DATE - LATE RELEASE JUNE 26, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 22)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND
MISSOURI PACIFIC RAILROAD COMPANY
--CONTROL AND MERGER--
SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY, SPCSL CORP. AND
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

(Arbitration Review)

Decided: June 26, 1997

We grant the petition of the United Transportation Union (UTU) for review of the arbitration decision issued by James E. Yost as it pertains to health benefits and decline to review the decision concerning the remaining issues raised by UTU.

BACKGROUND

By decision served August 12, 1996, in Finance Docket No. 32760 (the *Merger Proceeding*), we approved the common control and merger of the rail carriers controlled by the Union Pacific Corporation and the rail carriers controlled by the Southern Pacific Rail Corporation. The controlling operating railroad is now the Union Pacific Railroad Company (UP or the carrier), the respondent in this proceeding. In our decision approving the control and merger application, we imposed the employee protection conditions established in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84-90 (1979) (*New York Dock*), *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979).

Under *New York Dock*, labor changes related to approved transactions are effected through implementing agreements negotiated before the changes occur. If the parties cannot agree, the issues are resolved by arbitration, with possible appeal to the Board under its deferential *Lace Curtain* standard of review.¹ Affected employees receive comprehensive displacement and termination benefits for up to 6 years.

¹ Under 49 CFR 1115.8, the standard for review is provided in *Chicago & North Western Tptn. Co.—Abandonment*, 3 I.C.C.2d 729 (1987), *aff'd sub nom. International Brotherhood of Electrical Workers v. I.C.C.*, 862 F.2d 330 (D.C. Cir. 1988) (popularly known as the "*Lace Curtain*" case). Under the *Lace Curtain* standard, the Board does not review "issues of causation, the calculation of benefits, or the resolution of other factual questions" in the absence of "egregious error." *Id.* at 735-36. In *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company*, Finance Docket No. 30965 (Sub-No. 1) *et al.* (ICC served Oct. 4, 1990) at 16-17, *remanded on other grounds in Railway Labor Executives' Ass'n v. United States*, 987 F.2d 806 (D.C. Cir. 1993), the Interstate Commerce Commission (ICC) elaborated on the *Lace Curtain* standard as follows:

Once having accepted a case for review, we may only overturn an arbitral award when it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it exceeds the authority reposed in arbitrators by those conditions. [Citations omitted.]

Here, the parties were unable to reach an implementing agreement on labor changes covering two geographical areas, referred to by UP as the "Salt Lake Hub" and the "Denver Hub." When the parties could not agree, the dispute was taken to arbitration. On April 14, 1997, arbitrator James E. Yost issued his decision. The decision adopted the two implementing arrangements proposed by the carrier, with exceptions that have not been appealed by the carrier. The arbitrator found that the implementing provisions adopted in his decision were "necessary to effect the STB's approved consolidation and yield enhanced efficiency in operations benefitting the general public and the employees of the merged operations."

On May 5, 1997, UTU filed an appeal of the arbitrator's decision. UTU also requested a stay of the decision pending our review.² On May 21, 1997, UTU filed a motion for leave to submit a supplement to its petition for review and a tendered supplemental petition. UP filed a reply in opposition to admission of UTU's tendered supplement on May 23, 1997. UP filed its reply in opposition to UTU's appeal on May 27, 1997.

PRELIMINARY MATTER

In its motion for leave to supplement its petition, UTU submits two UP notices scheduling implementation of the award, which were sent to UTU on May 1, 1997. We will consider these notices because they provide material that was not available to UTU until shortly before the deadline for submission of its appeal and UP does not object.

UP does object to consideration of the remaining content of UTU's tendered supplement to its petition, arguing that UTU is not entitled to file "yet another brief on the merits." We agree. Under 49 CFR 1115.8, UTU is entitled to file only one appeal pleading. Moreover, UTU's supplement essentially constitutes repetitive and cumulative argument.

DISCUSSION AND CONCLUSIONS

UTU raises four issues in its appeal: (a) whether it was proper for the arbitrator to include language in his decision regarding representation during future negotiations; (b) whether the arbitrator properly approved provisions allowing the carrier to merge seniority districts and to force employees to switch seniority districts; (c) whether the arbitrator's approval of the current UP Eastern District Agreement as the uniform collective bargaining agreement for the affected employees (replacing the separate pre-consolidation agreements) was proper; and (d) whether the arbitrator properly approved the provisions in the implementing arrangements requiring employees to switch health care providers.

² By decisions served May 30, 1997, and June 10, 1997, implementation of the arbitrator's decision was stayed, with the latter stay running until July 1, 1997. The Brotherhood of Locomotive Engineers, on June 19, 1997, filed in opposition to the grant of a further stay. On the same date, UP filed a petition to vacate the stay. Given our decision here resolving the merits of the petition for review, the relief sought in these two pleadings has become moot. Moreover, both BLE and UP could have, and indeed should have, made the arguments contained in these pleadings in response to the initial stay request rather than some 45 days afterwards. Further, we find incredible the claim by UP now that a less than 30-day stay of the implementation of the subject arbitral award has materially disrupted the implementation of the underlying merger, our approval of which has been in effect since September 11, 1996. And we continue to expect UP to submit an in-depth analysis of the effects of the merger and condition implementation in its July 1, 1997 quarterly progress report on the underlying merger. Because we are resolving the merits of the petition for review, however, we will vacate the stay as of the service date of this decision.

I. UP's Allegation of Waiver

Before we discuss these issues, we must consider UP's contention that UTU waived consideration of them for the Denver Hub. During arbitration, UTU submitted a separate implementation proposal concerning the Salt Lake Hub but did not submit a separate proposal for the Denver Hub. The carrier argues that, by not making its own proposal concerning the Denver Hub, UTU waived its right to raise any of the aforementioned four issues on appeal as they apply to that Hub.

We disagree. A party can waive its objections only by failing to make them below. UTU did not fail to make objections below concerning the Denver Hub. In its submission, UTU phrased its criticism of UP in general terms that applied equally to the changes proposed by UP for both hubs, which changes were virtually identical. There was nothing in UTU's overall submission to indicate that UTU did not object to the changes proposed by the carrier for the Denver Hub. UTU's submission put the arbitrator on notice that UTU believed that certain changes proposed by UP were improper under *New York Dock* for both hubs. The arbitrator must have been on notice as to the scope of UTU's objections because he rejected implementation provisions proposed by the carrier for both hubs, not just the Salt Lake Hub. Because the record shows that UTU did object to the carrier's Denver Hub proposals, we conclude that UTU has not waived all arguments for the Denver Hub simply by not submitting its own separate proposal for that Hub.

II. The Issues Appealed by UTU

As explained in greater detail below, only one issue — whether the arbitrator properly approved the provisions in the implementing arrangements requiring employees to switch health care providers — satisfies the criteria for review by us under our *Lace Curtain* standard of review. The health care issue is reviewable because it involves an allegation that the arbitrator's decision exceeds the authority entrusted to him under our *New York Dock* labor conditions. The issue involving language pertaining to union representation during future negotiations is moot in light of our interpretation of the arbitrator's decision. The issues involving the necessity of seniority district changes and the consolidation of collective bargaining agreements are the sort of matters that have historically been decided by arbitrators under the Washington Job Protection Agreement of May 1936 and subsequently under our labor protective conditions on which, with the approval of the courts, we have traditionally deferred to arbitrators in the absence of egregious error. *CSX Corp.—Control—Chessie and Seaboard C.L.I.*, 6 I.C.C.2d 715 (1990).

A. Representation During Future Negotiations

The arbitrator's decision stated (at 4 and 5) that, if there are to be future negotiations, they should be between the "Eastern District General Chairman" and the carrier. UTU asserts that any future negotiations must be between "UTU" and the carrier, arguing that only UTU, as the current bargaining representative of the affected employees, has the authority to direct the carrier to the persons with whom the carrier must negotiate.

We do not interpret the decision as interfering with UTU's right to designate its own representative for future bargaining over issues affecting the Hubs. UTU has selected the UP Eastern District General Chairman to bargain for employees who come under the UP Eastern District Agreement.¹ The arbitrator imposed the UP Eastern District Agreement. When the arbitrator referred to possible future negotiations as being between the carrier and the Eastern District General Chairman, he was not attempting to lock UTU into this choice of a bargaining representative but was merely referring to the person whom UTU itself had designated to represent its members as being best able to discuss with management what various provisions mean. His suggestion was limited to the implementing agreement process and was not made any

¹ Declaration of W. Scott Hinckley, filed May 27, 1997, at 5-6.

part of the award we are asked to review. Plainly, the arbitrator did not purport to, nor could he, dictate representation for future bargaining purposes. Our interpretation moots UTU's appeal concerning this issue.

B. Changes in Seniority Districts⁴

UTU objects to the general provisions of the implementing arrangements approved by the arbitrator that allow the carrier to alter seniority districts and to force employees within the new hubs to move to different seniority districts. The implementing arrangements also contain special provisions that, in conjunction with the aforementioned general provisions, specifically allow the carrier to make seniority district changes for firemen, and UTU specifically objects to these provisions as well. UTU argues that all of these provisions contravene *New York Dock* by overriding collective bargaining agreement provisions⁵ when an override is not necessary to realize the public benefits of the consolidation.

It is now firmly established that the Board, or arbitrators acting pursuant to authority delegated to them under *New York Dock*, may override provisions of collective bargaining agreements when an override is necessary for realization of the public benefits of approved transactions. Where modification has been necessary, it has been approved under either former sections 11341(a) [recodified in section 11321(a)] or 11347 [recodified in section 11326(a)]. *Norfolk & Western v. American Train Dispatchers*, 499 U.S. 117 (1991); *Railway Labor Executives' Ass'n v. United States*, 987 F.2d 806 (D.C. Cir. 1993) (*RLEA*); *American Train Dispatchers Association v. I.C.C.*, 26 F.3d 1157 (D.C. Cir. 1994) (*ATDA*); and *United Transportation Union v. Surface Transportation Board*, 108 F.3d 1425 (D.C. Cir. 1997) (*UTU*). In *RLEA*, 987 F.2d at 814-15, the court elaborated on the necessity test, as follows:

[I]t is clear that the Commission may not modify a CBA willy-nilly: § 11347 requires that the Commission provide a "fair arrangement." The Commission itself has stated that it may modify a collective bargaining agreement under § 11347 only as "necessary" to effectuate a covered transaction. [Citation omitted.] ... We look therefore to the purpose for which the ICC has been given this authority [to approve consolidations]. That purpose is presumably to secure to the public some transportation benefit that would not be available if the CBA were left in place, not merely to transfer wealth from employees to their employer

In other words, the court's standard is whether the change is necessary to effect a public benefit of the transaction.

As noted, the arbitrator found that the consolidation was "necessary to effect the STB's approved consolidation and yield enhanced efficiency in operations benefitting the general public and the employees of the merged operations." This was a factual finding to which we must accord deference to the arbitrator under our *Lace Curtain* standard of review. Under our *Lace Curtain* standard of review, such factual findings are reviewed only if the arbitrator committed egregious error. Because UTU has failed to make the required showing, applying the *Lace Curtain* standard of review, we decline to review this finding.

⁴ Due to the nature of work in the railroad industry, operating employees are assigned to "seniority districts," which are lists of employees who are eligible to work in a given craft or operation in a defined geographical area, such as a hub. The order in which employees appear on these lists determines various employment rights.

⁵ Except for the firemen, UTU does not cite or provide the specific collective bargaining agreement provisions that are alleged to be contravened by the provisions of the implementing arrangements that allow mandatory switching of seniority districts. For the firemen, UTU cites language in Article XIII, section 1(7) of the October 31, 1985 UTU National Agreement.

C. Uniform Collective Bargaining Agreement

UTU challenges the arbitrator's decision to allow UP to select its collective bargaining agreement for the Eastern District as the uniform collective bargaining agreement that will apply to the affected employees (replacing the separate pre-consolidation agreements). As noted in our discussion of the changes in seniority districts, it is now firmly established that the Board (or arbitrators acting under *New York Dock*) may override provisions of collective bargaining agreements when an override is necessary for realization of the public benefits of approved transactions. Here, the arbitrator found that application of a uniform collective bargaining agreement was also among the changes that were necessary to effect the STB's approved consolidation and yield enhanced efficiency in operations benefiting the general public and the employees of the merged operations. This was a factual finding to which we must accord deference to the arbitrator under our *Lace Curtain* standard of review. Again, under our *Lace Curtain* standard of review, such factual findings are reviewed only if the arbitrator committed egregious error.

UTU itself admits that there are circumstances in which collective bargaining agreements may be merged to effect the goals of mergers, stating on page 29 of its submission to the arbitrator: "The Organization has continually recognized where there is a coordination, a fusion of collective bargaining agreements is necessary." Here, the necessity for the merger of bargaining agreements is supported by the number of collective bargaining agreements alone that were in effect before the merger — before the merger, the Salt Lake Hub consisted of six collective bargaining agreements, and the Denver Hub consisted of three collective bargaining agreements.⁶ The arbitrator could reasonably find that UP cannot effectively manage employees in a merged and coordinated operation if the operation must be burdened with six collective bargaining agreements, each with its own set of work rules. Our predecessor agency has previously upheld the consolidation of collective bargaining agreements.⁷ Under these circumstances, UTU bears a heavy burden in attempting to show that the consolidation of collective bargaining agreements in the Hubs was egregious error. We find that UTU has failed to meet its burden of showing that the arbitrator committed egregious error in approving the consolidation of collective bargaining agreements in the Hubs.

UTU also seems to argue that the arbitrator erred by failing to apply the predominate collective bargaining agreements in the respective Hubs.⁸ We disagree. UTU has submitted no

⁶ Declaration of W. Scott Hinckley, filed May 27, 1997, at 5.

⁷ In *Norfolk and Western Railway Company, Southern Railway Company and Interstate Railway Company—Exemption—Contract to Operate and Trackage Rights*, Finance Docket No. 30582 (Sub-No. 2) (ICC served July 7, 1989), the ICC upheld an arbitrator's merger of only two collective bargaining agreements. Consolidation of collective bargaining agreements was also approved in *CSX—Control—Chessie System, Inc., and Seaboard Coast Line Industries, Inc., et al.*, Finance Docket No. 28905 (Sub-No. 27) (ICC served Dec. 7, 1995) (*CSX—Control—Chessie/Seaboard*), 10 I.C.C.2d __ (1995), *aff'd*, *UTU, supra*. In *Wilmington Term. R.R.—Pur & Lease—CSX Transp., Inc.*, 6 I.C.C.2d 799, 819-21 (1990), the ICC refused to require a lessee to apply the different collective bargaining agreement in effect for the lessor to former employees of the lessor who transferred to the lessee, citing a court decision that noted the operational difficulties involved in such a requirement. See also: the 1985 Seidenberg arbitration decision (Exh. 11 of UP's submission to the arbitrator); the 1985 Brown arbitration decision (Exh. 12 of UP's submission to the arbitrator); and the 1985 Ables arbitration decision (Exh. 13 of UP's submission to the arbitrator). These examples of approved consolidations do not exhaust the list.

⁸ UTU states (Petition at 23) that it agreed to application of UP's Eastern District Agreement for the Salt Lake Hub and that the Eastern District Agreement predominates in the Denver Hub. UP responds that the UP Eastern District Agreement does *not* predominate in the

(continued...)

authority from the Board, the ICC, or a court that establishes a duty to adopt the predominate collective bargaining agreement that is in effect in an area where operations are being coordinated when consolidation of collective bargaining agreements is necessary in such an area to effect the benefits of a merger. While arbitrators may conclude that adoption of the predominate agreement makes sense in given situations, UTU has not explained why the arbitrator's failure to so conclude here was egregious error.

In *RLEA, supra*, the court admonished the ICC to refrain from approving modifications that are not necessary for realization of the public benefits of the consolidation but are merely devices to transfer wealth from employees to their employer. In its appeal, UTU made no effort to show that the UP Eastern District collective bargaining agreement is inferior to the collective bargaining agreements that it replaced. This is not a situation where the carrier is using *New York Dock* as a pretext to apply a new, uniform collective bargaining agreement that is inferior in matters such as wage levels, benefit levels, and working conditions. In fact, UP argues that its Eastern District Agreement is more costly because the collective bargaining agreement for the Denver & Rio Grande Western Railway Company, which was the other pre-merger agreement that might have been selected, has a crew consist provision more favorable to the carrier than the UP Eastern District Agreement.⁹

For these reasons, UTU has not shown that the arbitrator committed egregious error in approving the consolidation of collective bargaining agreements in the Hub territories as necessary for realization of the public benefits of the consolidation. Nor has UTU shown that the arbitrator committed egregious error in imposing the UP Eastern District collective bargaining agreement as the uniform agreement for operations in both of the Hubs. Because UTU has failed to make either of these required showings under the *Lace Curtain* standard of review, we decline to review this finding.

D. Health Benefits

UTU challenges the arbitrator's approval of provisions requiring employees to change their health benefits provider from the DRGW Hospital Association to the UP Hospital Association. UTU argues that: (1) the carrier negotiated implementing arrangements with the carmen, clerical, and engineer crafts that offered employees a choice of plans and that the same choice should be available here; (2) the withdrawal of employees from the DRGW Hospital Association plan will jeopardize that plan; (3) under the DRGW Hospital Association plan, the premiums are \$300 lower for a retired couple with no drug limits; and (4) health "fringe benefits" have a protected status under *New York Dock*.

⁸(...continued)

Denver Hub but proceeds to argue that (1) UTU has in effect locked itself into its statement that the Eastern District Agreement should apply in both Hubs, if a single collective bargaining agreement is applied, and therefore (2) we should dismiss UTU's attack on the consolidation of collective bargaining agreements on the grounds that the arbitrator applied the agreement sought by UTU.

We will not dismiss UTU's argument on these grounds. While UTU's statements in this portion of its petition are not clear, a fair reading of the entire record submitted by UTU shows that it is interested in preserving prior collective bargaining rights as much as possible and that it believes that the consolidation of collective bargaining agreements approved by the arbitrator would be detrimental to this interest.

⁹ The arbitrator rejected the carrier's attempt to reduce train operating crews in the Hubs (and several other changes), apparently finding that crew size was a systemwide "problem" having nothing to do with the *multiplicity* of carriers operating in any given area prior to the merger.

UP responds that UTU waived objection to the change in health benefits provider by failing to object to this change when the carrier submitted it to the arbitrator. We disagree. On page 19 of its separate submission to the arbitrator addressing certain commitments by UP made during the *Merger Proceeding*,¹⁰ UTU argues that, under our labor protective conditions, SP employees are entitled to retain their hospitalization and medical care after the merger. This put the arbitrator on notice that health benefits were at issue and that UTU desired to have negotiated benefits retained. Moreover, as explained below, the issue of health benefits goes to the adequacy of an implementing agreement imposed under our labor conditions--a matter that we are required to address whenever it is brought to our attention. See *Norfolk & Western R. Co. v. Nimitz*, 404 U.S. 37 (1971).

In its decision in *CSX--Control--Chessie/Seaboard*, *supra* note 8, the ICC defined the scope of rights, privileges, and benefits that must be preserved as including hospitalization and medical care. It did so by looking to an essential item of legislative history, paragraph 10 of the Model Agreement for the protection of labor under the Urban Mass Transit Act of 1962, which it set forth in its decision (ICC served Dec. 7, 1995, slip op. at 14-15):

(10) No employee receiving a dismissal or displacement allowance shall be deprived during his protection period, of any rights, privileges, or benefits attaching to his employment, including without limitation, group life insurance, hospitalization and medical care, free transportation for himself and his family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which he may be entitled under the same conditions so long as such benefits continue to be accorded to other employees of the bargaining unit, inactive service or furloughed as the case may be. [Emphasis added.]

Immediately after quoting this provision, the ICC summarized its view of rights, privileges, and benefits by stating (slip op. at 15):

We believe that this is compelling evidence that the term "rights, privileges, and benefits" means the "so-called incidents of employment, or fringe benefits." *Southern Ry. Co.--Control--Central of Georgia Ry. Co.*, 317 I.C.C. 557, 566 (1962), and does not include scope or seniority provisions.

In its decision reviewing *CSX--Control--Chessie/Seaboard*, the court adopted the ICC's test, which definitively governs this issue, holding (108 F.3d at 1430):

In this case, the Commission offers a definition: "rights, privileges, and benefits" refers to "the incidents of employment, ancillary emoluments or fringe benefits—as opposed to the more central aspects of the work itself—pay, rules and working conditions." See *Commission decision* at 14, reprinted in J.A. 237. And "the incidents of employment, ancillary emoluments or fringe benefits" refers to employees' vested and accrued benefits, such as life insurance, hospitalization and medical care, sick leave, and similar benefits. See *id.* at 15, reprinted in J.A. 238.

* * *

Under the Commission's interpretation, "rights, privileges and benefits" are protected absolutely, while other employee interests that are not inviolate are protected by a test of "necessity," pursuant to which there must be a showing of a nexus between the changes sought and the effectuation of an ICC-approved transaction. Under this scheme, the public interest in effectuating approved consolidations is ensured without any undue

¹⁰ See Attachment A to Second Declaration of Paul C. Thompson, filed May 5, 1997.

sacrifice of employee interests. In our view, this is exactly what was intended by Congress.

From this definition, we believe that employees' rights to membership in the DRGW Hospital Association plan must be preserved because these rights are a fringe benefit pertaining to "hospitalization and medical care."

UP responds that we must uphold the change in health benefits because (1) it is merely incidental to the approved adoption of a uniform collective bargaining agreement and (2) a contrary result would contravene the Board's refusal to allow parties to "cherry pick" among the provisions of pre-merger collective bargaining agreement provisions.¹¹ Moreover, UP notes that the arbitrator declined to impose the crewing provision it sought from another collective bargaining agreement on the grounds that doing so would violate the prohibition against "cherry picking."

We disagree. Our approval of a uniform collective bargaining agreement and refusal to allow "cherry picking" was not intended, and may not be used, to abrogate UTU's absolute right to the preservation of pre-consolidation rights, privileges, or benefits under collective bargaining agreements as a result of Section 2 of our *New York Dock* labor conditions, as interpreted by the ICC with the approval of the court in *UTU*.

UP also argues that UTU supported similar changes of benefits pursuant to the adoption of uniform agreements in other merger proceedings. Even if UTU did this, however, its support of such changes in the past would not estop UTU from opposing a change here. A union does not waive its right to preservation of rights, privileges, and benefits by failing to assert that right in prior proceedings. Nor does the fact that it might voluntarily agree to changes in rights, privileges and benefits mean that it can be forced to do so where, as here, the implementing agreement is imposed by arbitration. Thus, at a minimum, as UTU contends and as UTU asserts UP has done in other instances, UTU's members should have been afforded the choice of remaining with the DRGW Hospital Association plan or switching to the UP Hospital Association plan.

Regarding UP's argument that the change in health benefits is merely incidental, and that the harms alleged by UTU from the change in health care providers are "entirely speculative," there may be circumstances in which a "change" in a right, privilege, or benefit would be so inconsequential or nonsubstantive that it is really not a change at all and may thus be made without contravening the requirement in *New York Dock* that rights, privileges, and benefits under pre-existing collective bargaining agreements must be preserved. However, on the record before us, we conclude that the arbitrator exceeded his authority in imposing provisions requiring employees to change to the UP Hospital Association health plan against their will instead of preserving their right to continue to be covered by the DRGW Hospital Association plan.

This decision will not affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The arbitration decision requiring employees to change their health benefit provider from the DRGW Hospital Association to the UP Hospital Association for the Salt Lake Hub and the Denver Hub is reversed. We otherwise decline to review the arbitration decision.

¹¹ In approving the underlying merger, we specifically rejected a proposal by a group of unions to allow the unions to "cherry pick" the best provisions from existing UP or SP collective bargaining agreements. *Merger Proceeding*, slip op. at 84-85, 174.

2. The stay of the implementation of the arbitration award is vacated.
3. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary