In the Matter of Arbitration Between Union Pacific Railroad System Sacramento Northern Railway Company -and- United Transportation Union Sacramento Northern	OPINION AND AWARD Pursuant to New York Dock Conditions, Article 1, Section 11 ICC Finance Docket No. 28250 Organization Question 1

The undersigned, Charles M. Rehmus, in an award of February 14, 1986 returned one of twelve Questions that had previously been raised by the UTU to the parties for negotiation, retaining jurisdiction to render a final award if they were unable to resolve it within 90 days.

The issue relates to the continuance of health and welfare benefits of Sacramento Northern employees in light of the consolidation of the Sacramento Northern with the Western Pacific. It appears that the parties both met and corresponded on this issue several times between February 19 and April 18, 1986. General Chairman Lucas wrote me on April 21, 1986 that the parties had been unable to resolve it and asked a final award. After further correspondence regarding the necessity for a further hearing, I wrote the parties on May 8, 1986 that no further hearing would be necessary and they should make final arguments in writing. These written statements were received by June 30, 1986 and thereafter the record was closed.

QUESTION NO. 1

"Will the Health and Welfare Benefits for Sacramento Northern employees be preserved in their entirety?"

There is no need here to repeat the comments I made on this question in my earlier award. The problem remains as before. Article 4 of the Implementing Agreement the parties received on March 1, 1986 recognizes the possibility that prior rights SN employees may in the future work on WP assignments or comingled SN-WP assignments. In fact, some protected prior rights SN employees are now regularly serving comingled assignments and, in accordance with the Implementing Agreement, do so in accordance with the terms of the WP/UTU collective bargaining agreement. Given this, as well as the undoubted fact that fringe benefits such as health and welfare plans arise under bargained agreements, at what point, if ever, does a prior rights SN employee shift from the SN/UTU health and welfare plan to the different WP/UTU plan?

This is the subject on which the parties have been unable to reach agreement. The Union relies on Section 8 of the New York Dock Conditions which were applied to this consolidation and which states "No employee...who is [protected] shall be deprived of benefits attached to his previous employment, such as...hospitalization,..." It notes further that an affidavit given by former Secretary of Labor James D. Hodgson relating to the intent of this language states clearly that fringe benefit

protection would remain intact during an employee's protective period. Finally, to the Carrier's argument that the interests of the WP/UTU are involved in this question and its General Chairman should participate in its resolution, the Union responds that General Chairman Siler of the WP/UTU has specifically repudiated having any such interest (Un. Exs. B,I). The Union therefore insists that its protected members should remain under SN/UTU fringe benefits for six years following the date of my February 14, 1986 award.

The Carrier's position is that the March 1 Implementing Agreement was an arbitrated substitute for a collective bargaining agreement between it and the Union. This Agreement specifically contemplated that prior rights SN employees might in the future come under the terms of the WP/UTU bargaining agreement. In that case such individuals should also be covered by the WP/UTU fringe benefit package. The Carrier has made a number of different proposals to the Union on how this should be accomplished administratively, its most recent being that SN employees performing service on WP or comingled SN/WP jobs for five days in a given month would be covered by WP benefits beginning with the first of the following month.

I continue to regret the parties' inability to resolve this question themselves, for their failure requires that I do so with less than a full understanding of all of the contextual circumstances in which it arises. For example, I infer that SN employees prefer their present health and welfare package to

that available to their brothers on the WP, but I have no precise knowledge of the differences, why they occurred, or what the contractual trade-offs were that led to such differences. I find it difficult to believe that the differences are substantial or, if they are, that there are not off-setting benefits elsewhere in the WP/UTU agreement. Further, the SN/UTU could have had precisely what it asks for here had it been willing to give up its own collective bargaining agreement for that of the WP/UTU. That is an exchange that was made between the Carrier and the SN/BLE. Finally, I assume that a prior rights SN employee who finds the possibility of a change in health and welfare plans intolerable can exercise his seniority rights to remain on SN assignments, though there might be other costs involved in doing so. As noted, however, the parties preferred that I resolve this question on the present record rather than choose among the several compromises well understood by them.

The Implementing Agreement of March 1, 1986 stated that prior rights SN employees working WP or comingled SN/WP assignments would do such work under the terms of the WP/UTU bargaining agreement. Further, it was contemplated there that at the end of the protection period the WP/UTU Agreement would supercede and replace the SN/UTU Agreement. Health and welfare benefits for the employees here involved undoubtedly arise from their collective bargaining agreement. As noted in my February 14, 1986 award, employees cannot and should not be expected to shift back and forth between health and welfare plans on a weekly or

necessarily even a monthly basis. Nevertheless, there certainly may come a time when an employee has worked so long under an agreement that all of his rights, privileges and benefits should be derived only from that agreement, without possibility of further shifting back and forth. On balance, I have concluded that so long as prior rights SN employees are shifting back and forth between agreements they should remain under SN health and welfare benefits. After an individual has worked continuously for six months under the WP Agreement, however, it seems time that his benefits should also arise under that Agreement. Finally, in accordance with the New York Dock Conditions, protections only remain in effect for six years following an Implementing Agreement.

FINAL ANSWER TO QUESTION NO. 1

Any prior rights SN employee working only on WP or comingled SN/WP assignments for six consecutive months following March 1, 1986 shall, beginning with the seventh month, be transferred to health and welfare coverage under the WP/UTU program. Under no circumstances is it intended that any employee shall be deprived of benefits or receive dual payments or coverage because of such a transfer. Finally, all prior rights SN employees who remain covered under SN/UTU health and welfare plans shall be transferred to WP/UTU health and welfare plans on March 1,1992.

Charles M. Rehmus

July 28, 1986