

PUBLIC LAW BOARD NO. 7194

AWARD NO. 9
CASE NO. 9

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes Division – IBT Rail Conference
vs.
Union Pacific Railroad Company

ARBITRATOR: Janice K. Frankman
DECISION: Dismissal

STATEMENT OF CLAIM AND MOTION:

Request on behalf of G.D. Muscatt, for removal of discipline, assessed by Carrier and scheduled for hearing on July 15, 2008, and Motion by Carrier for dismissal with prejudice. (System File 1473704)

FINDINGS:

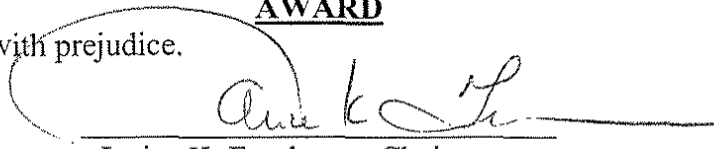
The Board, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employes within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute herein; and that the parties were given due notice of the hearing.

Claimant has executed a Release attached as Appendix A hereto, releasing Carrier from all claims and liability arising from his employment including personal injury claims arising from accidents on June 7, 2004, and October 31, 2006, asserted in the matter of *GORDON MUSCUTT v. Union Pacific Railroad Company*, Case No. 080507235, filed in Multnomah County Circuit Court in Portland, Oregon. Claimant has averred waiver of all rights to return to active service including agreement to never seek employment with Carrier.

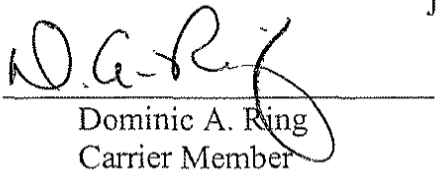
Prior to hearing of this matter, Carrier moved to dismiss this case with prejudice pending execution of the attached full Release of all Claims by Claimant. Following the hearing, Carrier submitted the Release document executed by Claimant on July 22, 2008. Organization concurred with Carrier’s Motion. It is therefore appropriate to grant Carrier’s Motion and to dismiss the case with prejudice.

AWARD

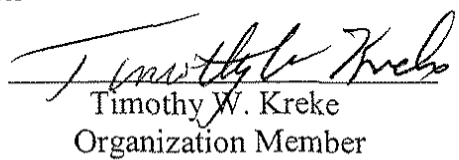
Case dismissed with prejudice.



Janice K. Frankman, Chairperson
Neutral Member



Dominic A. Ring
Carrier Member



Timothy W. Kreke
Organization Member

September 26, 2008

Sept. 26, 2008

RELEASE

I, GORDON MUSCUTT, Employee ID 013372, hereby enter into this Release in favor of Union Pacific Railroad Company and all related corporations, subsidiaries, predecessors-in-interest, successors-in-interest, and assigns.

DEFINITIONS

i. "Union Pacific", as used herein, means and includes Union Pacific Railroad Company, Missouri Pacific Railroad Company, Missouri-Kansas-Texas Railroad Company, Texas & Pacific Railway, Western Pacific Railroad Corporation, Chicago & Northwestern Transportation Company, Southern Pacific Transportation Company, Denver & Rio Grande Western Railroad Company and all of their predecessors-in-interest, successors-in-interest, directors, officers, employees, agents, representatives, subsidiaries, affiliates, leased and operated lines and insurance companies.

ii. MUSCUTT, as used herein, means and includes GORDON MUSCUTT and his successors, heirs, executors or administrators, assigns and attorneys.

iii. "Claims", as used herein, shall mean and include any and all suits, actions, causes of action, claims and demands of every nature whatsoever, WHICH ARE KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, for any illnesses or injuries arising out of MUSCUTT's employment with Union Pacific including, but not limited to:

a. any and all claims which MUSCUTT asserted, or could have asserted, against Union Pacific in the matter of *GORDON MUSCUTT v. Union Pacific Railroad Company*, Case No. 080507235, filed in the Multnomah County Circuit Court in Portland, Oregon, including but not limited to an accident on or about June 7, 2004 at or near Albany, Oregon; an accident on or about October 31, 2006, at or near Albany, Oregon;

GORDON MUSCUTT

- b. "All claims for musculoskeletal disorders, including:
- (i) injuries or disorders of or around the shoulder, including injuries or disorders of the rotator cuff, "impingement syndrome," and "thoracic outlet syndrome;"
 - (ii) injuries or disorders of the cervical spine, including degenerative spine disease;
 - (iii) injuries or disorders of the elbow, including medial epicondylitis, lateral epicondylitis, pronator teres syndrome, cubital tunnel syndrome, and tendinitis;
 - (iv) injuries or disorders of the hands and wrists, including carpal tunnel syndrome, DeQuervain's stenosing tenosynovitis, tendinitis, "trigger finger," hand arm vibration syndrome ("HAVS"), Reynaud's disease, palmar fasciitis, Guyon's canal syndrome, hypo-thenar "hammer syndrome," and hyper-thenar "hammer syndrome;"
 - (v) injuries or disorders of the knees, including degenerative joint disease of the knees, chondromalacia, meniscal tears or degeneration;
 - (vi) injuries or disorders of the hips, including degenerative joint disease and avascular necrosis;
 - (vii) injuries or disorders of the ankles and feet, including degenerative joint disease, tarsal tunnel syndrome, and plantar fasciitis; and
 - (viii) injuries or disorders of the lumbar spine, including degenerative disc disease; "facet joint syndrome;" foraminal stenosis; spinal canal stenosis; "internal disc disruption syndrome;" "sacroiliac joint syndrome;" neural (nerve root) compression; neural or vascular claudication; intervertebral disc "bulging," "herniation," or "sequestration;" and spinal instability.

any or all which are alleged to have been caused, precipitated, or aggravated by acute or "repetitive" or "cumulative" trauma during the course of employment with Union Pacific;

c. any and all claims for any Occupational Exposures to which MUSCUTT was exposed as an employee of Union Pacific including, but not limited to, any and all exposures to any toxic materials, metals or chemicals, including, without limitation, asbestos, creosote, dusts, fumes, gases, fuels, combustion products and by-products, exhausts, solvents, cleaners, benzene, vinyl chloride, toluene, pesticides, herbicides, weed defoliant, lubricants, paints, paint thinners, silica, creosote, manganese and/or any cancer-causing agents, caused by or contributed to by, or in any way the legal responsibility of any company or person within the above definition of Union Pacific by any method, including exposures by breathing, touching, ingesting, or otherwise in addition to exposures to which MUSCUTT was exposed as an employee of Union Pacific which are/were caused by or alleged to be caused by any third party, including without limitation, a Union Pacific customer, an industry served by Union Pacific, a manufacturer, supplier, owner, shipper, or consignee of any product transported by Union Pacific, a contractor engaged by Union Pacific, or owners of real property from which any exposure emanates;

d. any and all claims against Union Pacific for hearing loss and tinnitus which is either temporary or permanent in nature;

e. any and all claims or rights which MUSCUTT may have accumulated under any applicable collective bargaining agreement, claims for wages and bonuses, grievances, claims for other compensation of any type arising out of any employment relationship with the Company or its subsidiaries, and any and all claims of any kind which MUSCUTT could have or might have arising from or under Federal, State, or municipal laws

pertaining to age, sex, race, religion, veteran's status, job or labor protection, national origin, and handicap or other discrimination of any type, including, without limitation, the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Acts of 1866, 1870 and 1871, the Americans with Disabilities Act, the Railway Labor Act or any labor or personal contract of employment, including but not limited to, any claims for retroactive wage increases.

RECITALS:

A. MUSCUTT brought a lawsuit against Union Pacific captioned *Gordon MUSCUTT v. Union Pacific Railroad Company*, Case No. 080507235, filed in the Multnomah County Circuit Court in Portland, Oregon, seeking damages for illnesses or injuries as a result of MUSCUTT's employment with Union Pacific.

B. Union Pacific, without in any way admitting liability, and MUSCUTT'S, desire to fully and finally compromise any and all Claims arising out of MUSCUTT's employment with Union Pacific and terminate their relationship with each other forever.

C. MUSCUTT represents to Union Pacific that no person or insurance company, other than the Railroad Retirement Board or Aetna Life Insurance Company, have any rights or have asserted any liens or rights of subrogation, under any policies of insurance or otherwise, on account of any medical, hospital, nursing, or other expenses because of any alleged illnesses or injuries to MUSCUTT while employed by Union Pacific. MUSCUTT understands and agrees that Union Pacific relied upon this representation in making this Agreement.

THEREFORE, for the consideration set forth below, MUSCUTT AGREES as follows:

CONSIDERATION:

1. For the consideration of [REDACTED]

DOLLARS AND NO CENTS ([REDACTED]) [REDACTED]

[REDACTED] which represents sickness benefits received under the terms of the Railroad Unemployment Insurance Act, [REDACTED]

[REDACTED]
which represents supplemental sickness benefits received from Aetna Life Insurance Company, as well as consideration of an agreement severing the employment relationship of MUSCUTT and Union Pacific and the "bargained for" final disposition of actual and potential legal disputes between the parties, MUSCUTT releases any and all Claims against Union Pacific arising out of MUSCUTT's employment with Union Pacific. This release not only includes Claims which are presently existing or known, but also Claims which may develop or become known in the future.

MUSCUTT further agrees not to institute any action at law or in equity against Union Pacific for any claims, demands, actions, damages, costs, or compensation of any kind as a result of MUSCUTT's employment with Union Pacific, including but not limited to any claim for medical bills or health care, lost earning power, loss of consortium, mental anguish, pain and suffering, wrongful death, contribution and/or indemnity, and any other claims now or later existing. Union Pacific may plead this agreement as a complete defense to any action or proceeding brought by MUSCUTT in breach of this covenant.

2. MUSCUTT accepts payment as complete compromise of all claims which have accrued or which may hereafter accrue in favor of MUSCUTT arising out of MUSCUTT's employment with Union Pacific. MUSCUTT acknowledges receipt of payment by execution of this Release, and agrees that it is paid and accepted in full, final and complete compromise and

settlement of all claims, demands, actions, injuries, damages, costs and compensation of any kind arising out of the subject matter of this Release, whether known or unknown, whether or not ascertainable at this time.

3. As an additional consideration of this release, Claimant further acknowledges that all medical expenses incurred, beginning June 7, 2004, and ending on the date this Release of All Claims is signed, by reason of the injuries sustained by Claimant in an accident occurring on or about June 7, 2004, at or near Albany, Oregon, and an accident occurring on or about October 31, 2006, at or near Albany, Oregon, have been paid, or if unpaid, will be processed for payment by Union Pacific subject to the following: It is understood and agreed that in order for payment to be made, Claimant will submit all unpaid medical bills related to the injuries sustained by Claimant in this accident on proper insurance billing forms (HCFA for providers and UB for facilities) accompanied by a medical report or record to Union Pacific within (90) days from the date this Release of All Claims is signed. It is agreed that any medical providers covered by a PPO, HMO, or similar contract with or on behalf of Union Pacific that provided services in this case, will be governed by those agreements such that medical providers will not recover more than the total contractual amount for any particular procedure. Claimant also understands and agrees that Union Pacific will not pay more than reasonable and customary fees to Claimant's medical providers. To the extent any medical provider demands payment greater than the reasonable and customary fee, Claimant understands and agrees that ~~he~~/she will be solely responsible for the amount greater than the reasonable and customary fee. Bills received more than ninety (90) days after the date this Agreement is signed, even if submitted on the proper insurance billing forms (HCFA for providers and UB for facilities) will not be paid. Union Pacific will not pay any finance charge associated with any charges for medical treatment.

Claimant further agrees that all future medical bills, costs, or expenses of diagnosis, treatment, care, or rehabilitation are his responsibility, and Claimant agrees that the amount of such future medical bills, costs, or expenses may be unknown and uncertain, but Claimant assumes this obligation nonetheless. All such medical bills submitted on the proper insurance billing forms and accompanied by a medical report must be submitted to William Loomis, Sr. Claim Specialist, Union Pacific Railroad Company, 1035 Bethel Drive, Eugene, Oregon 97402, no later than ninety (90) days after the date this Release of all Claims is signed. All other costs are to be born by Claimant's private insurance carriers.

4. MUSCUTT considers himself permanently disabled as a result of the diseases, illnesses and injuries alleged in *GORDON MUSCUTT v. Union Pacific Railroad Company*, and as additional and partial consideration of the terms of this Release and based on the parties' desire to terminate their relationship with each other permanently, MUSCUTT hereby agrees to waive any right to return to active service, and expressly agrees to never seek employment, at Union Pacific Railroad Company, a corporation, and to the same extent as if expressly named, its subsidiaries, parents, affiliated companies and its leased and operated lines, and all of their respective successors and assigns, effective the date of this Release, and that none of such companies are under any obligation to take or retain MUSCUTT in employment in any capacity. It is understood that MUSCUTT will be retained on the roster as a permanently disabled employee without rights to return to active service. MUSCUTT also agrees that in the event he ever attempts to return to duty or assume a position with Union Pacific, such action shall constitute and be treated forthwith as his resignation from the employ of Union Pacific. MUSCUTT hereby agrees that he will not at any time in the future exercise any option to buy out

seniority rights that he may have under any offer made to his/her craft by Union Pacific or any of its affiliated companies or entities in any capacity.

PERMANENCY AND EXPECTED NATURAL PROGRESSION OF INJURY OR ILLNESS

5. MUSCUTT acknowledges any illnesses or injuries arising out of his employment with Union Pacific may be permanent and may naturally progress and may become more significantly disabling in the future and that recovery therefrom may be uncertain.

MUSCUTT acknowledges any illnesses or injuries arising out of his employment with Union Pacific may even lead to death. MUSCUTT acknowledges future medical treatment, including surgery, may be necessary in an attempt to alleviate or cure any illnesses or injuries. In making this release, MUSCUTT acknowledges he relies wholly upon his own judgment, belief, and knowledge of the nature and extent of his injuries, including the permanency of such injuries; the possibility of a natural progression of such injuries; the possibility that such injuries may become permanently disabling in the future; the possibility that such injuries may require future medical treatment in an attempt to alleviate or cure such injuries, including surgery; and that the possible future effects of existing injuries are specifically bargained for herein, included, and released in exchange for the payment of consideration stated hereinabove.

DISMISSAL AND INDEMNIFICATION

6. MUSCUTT expressly agrees to cause the dismissal with prejudice of the above-described suit against Union Pacific, and expressly agrees to indemnify, defend, and to hold forever harmless Union Pacific against any and all claims, demands, actions, damages, costs and compensation of any kind which may at any time be brought by any person or party against Union Pacific for any Claims from injuries to MUSCUTT while employed by Union Pacific, including, but not limited, to any claims asserted by persons claiming to be heirs of MUSCUTT

and/or any claims, demands, actions, damages, costs and compensation by any person or entity based on any lien or right of subrogation, including, but not limited to, any Railroad Retirement Board lien, lien from Aetna Life Insurance Company, or for medical care and treatment provided to MUSCUTT.

ADVICE OF COUNSEL

7. MUSCUTT consulted with his attorneys in making this release, and he is relying upon his collective judgment, belief and knowledge about this matter, including Union Pacific's potential liability, and he is not relying upon any statement or promise by Union Pacific, except for the payment described above.

8. MUSCUTT represents that the terms of the Release have been completely read and/or explained by his attorney and that said terms are fully understood and voluntarily accepted by MUSCUTT.

RELEASE OF THIRD PARTY CLAIMS

9. MUSCUTT agrees to release any and all third parties, including but not limited to suppliers, customers, and shippers of Union Pacific, from any and all liability for any and all claims, demands, damages, costs, liabilities, losses of services, losses, expenses, compensations, reimbursements, actions, rights and causes of action of whatsoever kind and nature, resulting from or in any way arising or growing out of, and by reason of, any and all known and unknown, foreseen and unforeseen, damages, expenses, costs, losses, liabilities, claims, bodily, personal and psychological injuries, and the consequences thereof, which MUSCUTT may now or hereafter have, resulting or which may or will result or arise out of, directly or indirectly, the injuries and damages allegedly sustained as a result of MUSCUTT's employment with Union Pacific.

ASSIGNMENT OF CLAIMS

10. MUSCUTT hereby assigns to Union Pacific any and all rights he may have to pursue any and all claims, causes of actions and/or lawsuits against any third parties or other entities responsible for any injuries and damages allegedly sustained as a result of MUSCUTT's Claims.

ATTORNEY FEES

11. Any costs or attorney's fees incurred by MUSCUTT arising out of or relating to or in connection with the claims which have been made, are his sole and separate responsibility and not that of Union Pacific.

ENTIRE AGREEMENT

12. This Release contains the entire agreement between MUSCUTT and Union Pacific with regard to the matters set forth herein and are binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs and successors and assigns of MUSCUTT and Union Pacific.

LIABILITY DENIED

13. MUSCUTT acknowledges that the payment of consideration referred to herein is tendered in compromise of disputed claims and shall not be construed as an admission of liability by Union Pacific, since Union Pacific expressly denies liability.

SEVERABILITY

14. In the event that one or more of the provisions contained in this Release shall for any reason be held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Release.

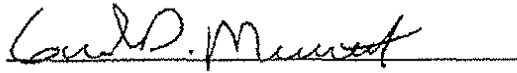
SECTION HEADINGS

15. Headings of the sections in this Agreement are for the convenience of the Parties only and shall not be construed as affecting the terms of this Agreement or used in interpretation of the terms of this Agreement.

EVIDENCE

16. MUSCUTT further specifically agrees to the introduction of this entire Release and hereby specifically waives any objection of any nature to the admission in evidence of this entire Agreement at any trial, hearing, legal proceeding, quasi-judicial proceeding, or administrative proceeding of any nature in any action against Union Pacific involving a claim for personal injury instituted subsequent to the date hereof.

EXECUTED in triplicate this 22 day of JULY, 2008.

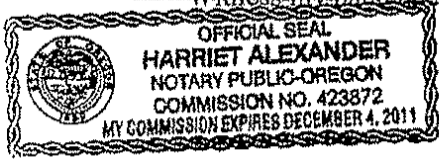


GORDON MUSCUTT

STATE OF Oregon)
) SS
COUNTY OF Linn)

On this 22 day of July, 2008, before me personally appeared
GORDON MUSCUTT, to me known to be the person named in and who executed the Release
and acknowledged that the same was executed of his own free act and deed.

~~Witness my hand and notary seal the date aforesaid.~~



Harriet Alexander
Notary Public

My Commission Expires:

12/4/2011

I hereby certify that I have read the foregoing and have counseled my client,
GORDON MUSCUTT, regarding the terms of this agreement prior to his/her signing of the
agreement.

Philip G Arnold

Attorney for GORDON MUSCUTT