BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED
APR 7 2005

FINANCE DOCKET NO. 32760, SUB-FILE 42

IN THE MATTER OF ARBITRATION BETWEEN UNION PACIFIC RAILROAD COMPANY AND JOHN E. GROTHER, NEW YORK DOCK ARBITRATION

(Arbitration Review)

APPENDIX OF EXHIBITS TO
CARRIER'S RESPONSE TO PETITIONER'S APPEAL

ENTERED
Office of Proceedings
APR 11 2005
Part of
Public Record

Respectfully submitted,

THOMPSON COBURN LLP

By _____

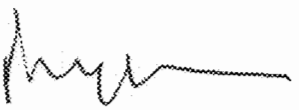
Clifford A. Godiner
Rodney A. Harrison
One US Bank Plaza
St. Louis, Missouri 63101
314-552-6000
FAX 314-552-7000

Attorneys for Carrier

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served, via United States mail, first class postage prepaid, this 8th day of April 2005 on:

Gordon P. MacDougall
1025 Connecticut Ave., N.W., Suite 410
Washington, D.C. 20036



IN THE MATTER OF THE ARBITRATION

BETWEEN

JOHN E. GROTHER
("Grother" or "Claimant")

AND

UNION PACIFIC RAILROAD COMPANY
("Union Pacific," "UP," or "Carrier")

Pursuant to Article IV of the New York Dock Conditions Imposed by the Surface Transportation Board in Finance Docket No. 32760.

CLAIM OF
John E. Grother
(Whether Claimant is a displaced employee under the New York Dock conditions; whether Claimant was adversely affected by the merger; whether claim should be barred by the doctrine of laches).

OPINION AND AWARD

Before: Arbitration Committee

Members:

William E. Loomis General Director, Employee Relations Planning	Carrier Member
Gordon P. MacDougall, Esq.	Grother Member
Lynette A. Ross	Neutral/Referee Member
Appointment of Neutral Member	January 21, 2004

I. INTRODUCTION

The hearing before this Arbitration Committee was held on October 12, 2004 at the offices of the National Mediation Board, 1301 K Street, N.W., Suite 250-E, Washington, DC, commencing at 10:00 a.m. before the undersigned Arbitrator who was designated as the Neutral/Referee Member of the Arbitration Committee by the National Mediation Board, pursuant to the above-captioned New York Dock Protective Conditions, 360 ICC 60, 84-90 (1979), aff'd. sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

Pursuant to the Memorandum of Agreement Between John E. Grother and Union Pacific Railroad, signed on June 18, 2004 by Gordon P. MacDougall, for John E. Grother, and William E. Loomis, on behalf of the Union Pacific Railroad Company, on September 14, 2004, the partisan members served written submissions, one upon the other, simultaneously, with copies to the Neutral/Referee Member. During the hearing before the Arbitration Committee, the parties were afforded full opportunity to "present witnesses, statements of fact, supporting evidence, data and argument"[1] in support of their respective positions. A 222-page stenographic transcript of this hearing was made. The partisan members of the Committee each filed post-hearing briefs on November 22, 2004, whereupon the record was declared closed. The partisan members stipulated at the hearing as to the Neutral/Referee Member's jurisdiction and authority to hear this case and issue a final and binding decision in this matter.

II. STATEMENT OF THE ISSUES

The issues as framed by the Grother Member of the Arbitration Committee are:

"A. Applicability of New York Dock Employee conditions.

1. Whether employee was adversely affected as a result of the STB-approved merger, and has the burden to prove the causal connection between the merger and the adverse affect (sic).

2. Whether the involved employee was an 'employee' within the meaning of 49 U.S.C. 11326 and NYD at the time of first adverse affect (sic).

3. Whether employee's request for compensation/benefits under NYD was so unreasonably delayed as to be barred by the doctrine of laches.

B. Measure of Compensation/Benefits (Deferred Issue)."[2]

---

[1] See paragraph D, page 2, of the above-referenced Memorandum of Agreement ("MOA," or "MA-5D") signed on June 18, 2004 by the partisan members. (Grother Ex. E-16, Union Pacific Ex. 19).

[2] Pursuant to paragraph E, page 2 of the MOA, the Committee's jurisdiction was limited to "questions concerning the interpretation, application, or enforcement of New York Dock conditions to Grother and Union Pacific." According to paragraph E, "The matter of the measure of compensation and/or benefits due Grother, if any, will be deferred until, and only considered after, the Committee first finds that New York Dock is applicable to Grother, and that he may be entitled to some compensation and some benefits." Thus, under the MOA, the Committee will

The issues as framed by the Carrier Member of the Arbitration Committee are:

"(1) Was John E. Grother, at the time of his reduction in salary, a 'displaced employee' subject to the protection of the New York Dock conditions?

(2) Is John E. Grother's claim for a displacement allowance pursuant to New York Dock barred under the doctrine of Laches?"

III. RELEVANT PROVISIONS OF THE NEW YORK DOCK CONDITIONS

NEW YORK DOCK CONDITIONS
Finance Docket No. 28250
APPENDIX III

Labor protective conditions to be imposed in railroad transactions pursuant to 49 U.S.C. 11343 et seq. (formerly Sections 5(2) and 5(3) of the Interstate Commerce Act), except for trackage rights and lease proposals which are being considered elsewhere, are as follows:

1. Definitions. — (a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

* * *

(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of Section 7(b) of the Washington Job Protection Agreement of May 1936.

* * *

---

first consider the question of whether the Claimant was covered and, if so, entitled to any benefits pursuant to the New York Dock conditions. If the Committee should deem the Claimant eligible for benefits under the New York Dock conditions, the partisan members thereafter shall confer in an attempt to reach agreement on the measure of compensation or benefits due the Claimant.

11. (e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

* * *

ARTICLE IV

Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between the railroad and an employee not represented by a labor organization with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within 30 days after the dispute arises, either party may refer the dispute to arbitration.

IV. FACTUAL BACKGROUND

According to the Verified Statement-Causality submitted by Claimant John E. Grother with the Grother Member's September 17, 2004 pre-hearing submission, on May 12, 2003, while holding the position of Manager of Intermodal Operations at Houston, TX, the Claimant sent a letter to James V. Dolan, Union Pacific's Vice President of Law, seeking compensation of $107,370.00 in New York Dock benefits as a "displaced employee." In the Claimant's view, his "displacement" to Houston was a direct result of the September 11, 1996 merger between the Union Pacific and Southern Pacific railroads. In that Verified Statement-Causality, the Claimant asserted, "I have held this position since July 1, 1997, when I was displaced as Senior Manager Terminal Operations (SRMTO) at Tucson, AZ. I suffered a reduction in pay and benefits by my displacement and transfer from Tucson to Houston."

The Carrier has consistently maintained, and as will be further discussed below, that the Claimant's transfer should not be viewed as a "displacement" for purpose of entitlement under

4

the New York Dock conditions. Rather, it has been the Carrier's position that at the time of the merger, the Claimant held an "official" position, and thus was not eligible for any benefits or displacement allowance under the New York Dock conditions. In any event, the demotion was for performance reasons, and was not a direct result of the merger. However, from the record before this Arbitration Committee, the Carrier does not appear to disagree that a result of the transfer from Tucson to Houston was a reduction in Claimant's salary, from approximately $6,200.00 to $4,928.00 per month.

Claimant's Verified Statement-Causality states that the Claimant began his railroad career on June 1, 1969 as a non-agreement employee on the former Southern Pacific Rail Corporation (SP) and, since that date, and for nearly 35 years now, has continued to work in a non-agreement capacity. On or about September 16, 1995, approximately one year before the merger of the SP and UP railroads, the Claimant was transferred from the non-agreement position he held at the SP's headquarters in San Francisco, CA, to a position of Terminal Superintendent at the SP's offices at Tucson, AZ. According to the record, at the time of the merger implementation, the Claimant held the above position at Tucson.

As the facts of record in this case further indicate, on August 6, 1996, the Surface Transportation Board (STB), in Finance Docket No. 32760, approved the common control and merger of the rail carriers controlled by both the Union Pacific and the Southern Pacific railroads, and the merger was finalized on September 11, 1996. In its Decision setting forth its approval of the merger, the STB ruled that the New York Dock conditions would apply to the rail employees of the merger applicants.

According to the record, approximately seven months after the effective date of the merger, on April 16, 1997, the Claimant's job title at Tucson, AZ was changed from the SP title of Terminal Superintendent to the UP title of Senior Manager Terminal Operations (SRMTO).

As stated above, at the time of the Claimant's subsequent transfer to Houston, TX, his salary at Tucson was approximately $6,200.00 per month. It is essentially undisputed in the record that, about two months after his title had been changed to SRMTO, the Claimant was informed that the Carrier had decided to relocate him to a position of Manager of Intermodal Operations at Houston, at a salary of approximately $4,928.00 per month. That "demotion," as the Carrier so states, or "displacement," as the Claimant would have it, to Houston, at a lower salary than that which he had been earning at Tucson, is the basis for the instant dispute before this Arbitration Committee.

According to the Claimant, as explained in his Verified Statement-Causality, there is an undeniable nexus between the UP/SP merger implementation and his "displacement" from his SRMTO position at Tucson, to the lower paying position of Manager of Intermodal Operations at Houston. A significant portion of this record is comprised of the Claimant's accounts of the Carrier's post-merger switching operations at Tucson, following a decision by the UP to discontinue its terminal switching operations at Phoenix, AZ.

Throughout his correspondence in this matter, the Claimant has emphasized that the Carrier's yard consolidation "experiment" at Tucson was a failure well known throughout the industry, and was neither his fault nor the fault of any other employee working at Tucson at that time. In his correspondence following his filing for the instant New York Dock arbitration, the Claimant has stressed that he was not involved in formulating the new terminal switching plans at Tucson, but that other "non-agreement" employees made those strategic-type decisions, and that notwithstanding his title of SRMTO, he merely carried out, in a subordinate fashion, the high-level decisions of his superiors.

Thus, asserted the Claimant in his Verified Statement-Job Classification, the non-agreement position he held on the effective date of merger was not "managerial in nature," as stated below:

> "This verified statement is to present facts in support of my contention that at all times since September 11, 1996 (consummation of the UP/SP merger), and between April 16, 1997 and my displacement on July 1, 1997, I have been an employee, within the meaning of the Railway Labor Act (RLA), which I understand defines a subordinate official as an employee, and I am an employee under appropriate New York Dock conditions. I do not consider myself to have been an 'official.'" [3]

It is not disputed in the record that, as stated above, on May 12, 2003 the Claimant wrote a 46-page letter, including 100 pages of attachments, to the Carrier's Vice President of Law, James Dolan, notifying Dolan that he was in the process of obtaining legal counsel to represent him in an arbitration pursuant to the New York Dock conditions, with specific regard to, in Claimant's words, "Grother's merger transaction related demotion effective July 1, 1997, which has classified Grother as a New York Dock 'displaced employee.'" (Union Pacific Ex. 2; Grother Ex. E-2).

According to the record, before receiving any response from the Carrier, on June 16, 2003, the Claimant sent a "30-day notice" to the National Mediation Board requesting arbitration of his demand for New York Dock benefits as a result of his "demotion and reduction in wages of $1,272 per month and other fringe benefits effective 7/1/97." According to that notice, the Claimant's request for arbitration resulted from what the Claimant regarded as "UPRR's failure to respond to the certified letter to Mr. Dolan." (Union Pacific Ex. 3; Grother Ex. E-3).

By letter dated July 7, 2003, Roland Watkins, the NMB's Director of Arbitration Services, responded to the Claimant's above letter and explained that he was sending a copy of

the Claimant's June 16, 2003 letter to the UP's Vice President of Law, Dolan, for review and comment, and requested a Carrier response by July 21, 2003. (Union Pacific Ex. 4). The record indicates that Dolan forwarded the Claimant's May 12, 2003 letter to Marilyn Ahart, the UP's Director of Protection Management. In her July 18, 2003 letter to the Claimant, with a copy to NMB Director Watkins (Union Pacific Ex. 5; Grother Ex. E-4), Ahart, in her second paragraph, stated:

> "I have reviewed your claim and have determined that you do not meet the required criteria to qualify as a displaced employee under the provisions of New York Dock. In order to be certified for coverage, an employee must prove that any adverse affect (sic) was as a direct result of the merger transaction. As you stated in your letter, when the merger was implemented, you remained on a management level position. All records indicate your subsequent demotion was based on performance standards, not as a result of the merger."

Ahart further explained that "to be considered for coverage an individual must satisfy the term of 'employee' as it is defined in the Railway Labor Act and by New York Dock cases." Relying on the on-property arbitral precedent set by a 1987 award rendered by Referee Seidenberg on the issue of "employee,"[4] Ahart essentially emphasized that in light of the management position the Claimant held on the merger implementation date, the Claimant could not "meet the definition of employee under the Railway Labor Act and New York Dock cases." Ahart quoted the determinative language of the Seidenberg Award, as follows:

> "A review of the history of labor protection conditions compels us to hold that the term 'employee' was not intended to be applied in a generic sense, i.e., all persons employed by the railroad, but rather the term as it has been hammered out on the anvil of railroad labor legislation, rulings of the ICC, court decisions, arbitral awards, to mean only those employees and subordinate officials who are subject to unionization, or who perform duties that generally are described as **being other than administrative, managerial, professional, or supervisory in nature.**" (emphasis supplied).

---

[3] See page 1 of Verified Statement of John E. Grother (Job Classification), dated September 14, 2004.
[4] See Union Pacific Ex. 26, New York Dock Arbitration Award, B. J. Maeser, T. P. Murphy, E. M. Sengheiser and K. W. Shupp v. Union Pacific Railroad Company, et al. (Seidenberg; 12/18/87)

Director Ahart's July 18, 2003 letter furthermore included a third reason for denying the Claimant's request for protective benefits under the New York Dock conditions, one involving procedure. Invoking the equitable doctrine of laches, Ahart stated that, although the New York Dock conditions do not prescribe specific time limits for the filing of employee claims, here the Claimant waited an unreasonable length of time before filing his claim giving rise to the instant arbitration. Applying the weight of "considerable arbitral authority" on the laches issue to the facts of this case, Ahart asserted that notwithstanding her two substantive reasons for denying the claim ("causality" and "jurisdiction"), from the procedural standpoint of filing untimeliness, the claim was fatally flawed.

The chronology of events, and correspondence relevant thereto, which then transpired between the July 18, 2003 date of Director Ahart's written claim declination to the June 18, 2004 date on which the partisan members of this Arbitration Committee formalized the procedures for the hearing of this matter in arbitration, as set forth in the Memorandum of Agreement (MOA), referred-to above, are referenced and discussed in the pre-hearing submissions prepared by the Carrier and the Grother Member, and are included herein by reference.[5] The Neutral/Referee Member has carefully reviewed the facts, relevant documentation and correspondence, as well as the legal and arbitral precedent, relied upon by the Claimant and the Carrier, comprising this extensive record, prior to preparing this Opinion and Award.

V. THE POSITION OF THE PARTIES

A. The Grother Member

As stated above, from the standpoint of procedure, the Claimant's arguments, and exhibits furnished in support thereof, are incorporated herein by reference. To summarize, the

Claimant contends that: (1) "the entire arbitration process, with its purported limited agency and judicia (sic) review [is] prejudicial, particularly where, as here a non-agreement railroad employee is involved," (2) the procedures set forth in the June 18, 2004 MOA governing the procedures for furnishing pre-hearing submissions did not allow Claimant to submit a pre-hearing reply on the issue of causality, and thereby respond to the Carrier's defense in that regard, and were in contrary to the "New York Dock scheme." In that regard, the Grother Member emphasized that, nevertheless, by identifying the UP/SP merger as the transaction that gave rise to his displacement to Houston, TX, and his uncontroverted loss of earnings, the Claimant fully satisfied his burden of proof, under Article I, Section 11(e), quoted above.

Concerning the substantive issues before this Committee, the Grother Member has presented many detailed arguments which, while carefully considered by the Committee, will be addressed in summary form. The Claimant strenuously argues that the Carrier's affirmative defense that the transfer was for reasons involving the Claimant's job performance as a non-agreement manager, as opposed to as an employee or subordinate official affected by the merger implementation, simply was not substantially proved in the record. Primarily relying on the argument, as set forth in his Verified Statement-Causality, that the "failed switching experiment at Tucson," an outgrowth of the merger implementation, in fact, triggered his "displacement," the Claimant strongly asserts that, with respect to the issue of causality, the Claimant entirely met his burden of proving the nexus between the merger implementation and his displacement to Houston.

With respect to the second issue of whether the Committee should find that the Claimant was an "employee" eligible for coverage under the New York Dock conditions at the time of the merger implementation, the Grother Member asserted that the Claimant credibly and

[5] See Union Pacific Exhibits 5 through 20; and Grother Exhibits E-4, and E-6 through E-17.

convincingly established throughout the record that notwithstanding his title of Senior Manager Terminal Operations (SRMTO), his actual duties and responsibilities were non-managerial in nature, and were much more consistent with the duties typically performed by an "employee" or "subordinate official," as those terms are comprehended by the Railway Labor Act and arbitration cases arising under New York Dock, as well as under the National Labor Relations Act.

According to the Claimant, the Carrier's sole reliance on its cited awards of arbitration panels in support of its position that the Claimant held an "official" position at the time of the merger, as opposed to looking toward broader authority, is incorrect, and that while such awards may be "helpful," they should not be regarded "governing" because they stemmed from disputes involving railroad employees who had been represented by labor organizations. Given the Claimant's status as a non-agreement employee not represented by any organization, the arbitral precedent should not weigh heavily on this Committee, the Grother Member asserts.

The Claimant thus strongly contends, therefore, as extensively set forth in his pre-hearing submission and relevant exhibits, that the SRMTO position he held at the time of the merger implementation and his subsequent transfer, "was below the level of the Service Union Superintendent (Division Superintendent); indeed he was two levels below the Division Superintendent." According to the Claimant, this is significant because, based on his interpretation of various rulings of the Interstate Commerce Commission (ICC), cited on pages 16 and 17 of the Grother Member's pre-hearing submission, in the Claimant's view the ICC has "generally" held that "persons below the level of Division Superintendent are subordinate officials or employees." Employing that logic, Grother should be deemed as similarly covered.

It is the Claimant's expressed opinion that, at the time of the merger, the characteristics of the SRMTO position he held at Tucson were, in fact, consistent with that of an "employee"

or "subordinate official," as opposed to an "official" of the Carrier and, more importantly, coincided with the "job evaluation factors used by the National Mediation Board," as set forth in its Representation Manual, or what the Claimant referred to as a "9-point test to determine 'subordinate employee.'" [6] Based on the Claimant's analysis of his job, as set forth in his Verified Statement-Job Classification, the Grother Member forcefully argued on page 19 of the submission that:

> "The V.S.[7] Grother (Job Classification) shows that Employee did not have authority to hire, discharge, or discipline anyone, or to recommend the same. V. S. Grother, 4-3 (Job Classification). He had no effective supervisory authority, but was an 'order taker.' (ibid. 4). He had no authority to authorize or grant overtime. (ibid. 4). He was without power to transfer or establish assignments. (ibid. 4). He did not create policy; rather he followed policy. (ibid. 4). Employee lacked authority to commit funds, and had a de minimus expense account which was seldom used. (ibid. 5); his authority was circumscribed by many written policies and directives. (ibid. 3-4). Employee was at the 8th level in the UP organizational hierarchy. (ibid. 6). Most of Employee's time was not actually spent on SRMTO duties, but was spent doing work one level below, at the MYO position. (ibid. 6 & Atta. 2). Finally, Employee based upon the work performed, was on the same 'band' level with other subordinate officials who were subject to unionization. (ibid. 7)."

Therefore, based on the above summary of the Claimant's duties and responsibilities, the Grother Member strongly argued that the Claimant obviously cannot have been regarded as having worked as an "official" under "NMB rules." Moreover, the Claimant asserted in his Verified Statement-Job Classification that he had "considered himself subject to unionization," the Grother Member pointed out. According to the submission prepared on the Claimant's behalf, having analyzed various court rulings addressing eligibility issues under 49 U.S.C. §11326, in light of the job attributes of the Claimant's SRMTO position held at the time of the

---

[6] According to Claimant's reference to §9.211 of the Representation Manual, an "official" is defined as follows: (1) the authority to dismiss and/or discipline employees or to effectively recommend the same; (2) the authority to supervise; (3) the ability to authorize and grant overtime; (4) the authority to transfer and/or establish assignments; (5) the authority to create carrier policy; (6) the authority to commit carrier funds; (7) whether the authority exercised is circumscribed by operating and policy manuals; (8) the placement of the individual in the

merger implementation, there simply is no doubt that the Claimant was not a managerial employee ineligible for protection, i.e., displacement allowance, contained in the New York Dock conditions. Thus, the decisions rendered by the ICC and various circuit courts, as well as two arbitration awards[8] cited by the Grother Member on pages 19 through 23 of the Grother pre-hearing submission lend strong support to a finding by this Committee that, at the time of the merger implementation, the Claimant was, in fact, an employee within the meaning of 49 U.S.C. 11326 and thus eligible for the New York Dock benefits requested herein.

In response to the third issue raised by the Carrier, that the instant claim should be barred from consideration by this Committee as a result of laches, the Claimant contends that because there are no stated time limits for instituting claims under the New York Dock conditions, this Committee must not dismiss the claim as untimely, and that the Carrier's position that the claim is barred under the doctrine of laches "border(s) on the frivolous." The Claimant further submits that on July 15, 1997, just two weeks after the Claimant had been downgraded from SRMTO at Tucson to the position of Manager of Intermodal Operations at Houston, he, in fact, furnished the Carrier a "written notice concerning his displacement, which was acknowledged September 4, 1997."

Concerning such "notice," the record establishes that on July 15, 1997, again, just two weeks after the effective date of Claimant's transfer to Houston, the Claimant sent a letter to the Union Pacific's President and C.E.O., J. E. Davis, requesting "some type of MTO position (if not the senior MTO) in the Arizona area and without the 21% wage reduction."[9] Thus, given

---

organizational hierarchy of the carrier; and (9) any other relevant factors regarding the individual's duties and responsibilities.

[7] V.S.=Verified Statement.

[8] See Thomas M. Curley, et al. v. Missouri Pacific Railroad Company (Brown; 1987); and Southern Pacific Empowered Employees v. Southern Pacific Transp. Co. (Fredenberger; 2000).

[9] Based on the record, the Committee reasons that MTO would stand for "Manager Terminal Operations," given the SRMTO position repeatedly referred-to above. The Claimant's letter to C.E.O. Davis is found at Union Pacific

the letter he had sent to Davis, just two weeks after the effective date of his transfer, in defense of the Carrier's procedural charge as to laches, the Claimant has consistently maintained that, "UP was well aware of Employee's claim, even though the dispute was not labeled NYD." The Claimant further asserted that, "...other claims arose out of Employee's displacement, under other federal provisions, and UP conceded it was aware of these related claims." (See p. 36, Claimant's post-hearing brief; and Exh. GH-28 [Reply Verified Statement of John E. Grother], p. 13).

Moreover, the Claimant has emphasized throughout this proceeding that the Carrier's ability to defend itself has at no time been compromised by the Claimant's delayed filing of a claim requesting benefits under the New York Dock conditions. For example, the Carrier official to whom the Claimant reported at Tucson, Service Unit Superintendent, Ken Packard, was still employed by the Carrier when the Claimant sent his May 12, 2003 letter to the UP's Vice President of Law, James V. Dolan. Thus, at that time, Packard arguably still possessed detailed knowledge of the factors leading to the Claimant's "displacement," the Claimant stressed. Indeed, relying on certain testimony provided by Packard, who appeared at the hearing as a Carrier Witness, the Claimant's displacement was not motivated by disciplinary concerns. Therefore, argues the Claimant, if his transfer to Houston was not for disciplinary reasons (as a "lost" personnel form, identified as "UP 15121" supposedly at one time had indicated), the only reason for the transfer was merger-related, again, as a result of the "failed switching experiment at Tucson." Indeed, relying on the Verified Statement of Conductor Tom Moore (Ex. GH-27, p. 3), the Claimant submits that, as Moore so stated under oath:

> "...The failure of this merger yard consolidation program was not the fault of Grother or for that manner any of the non-agreement employees in Tucson as they gave it their all. The people in Omaha who orchestrated this plan without major

---

Ex. 2, pp. 64-66; or Grother Ex. E-2, Exh. 10). Davis's one-page response, dated September 14, 1997, is found at Union Pacific Ex. 2, p. 68; or Grother Ex. E-2, Exh. 11).

repairs to trackage or increased staffing of personal (sic) in Tucson yard are the ones who caused this plan to fail!"

Finally, notwithstanding the reasons set forth above in defense of the Carrier's challenge regarding the timeliness of his claim, the Claimant gave as an additional reason, a fear "retaliatory discharge," that would purportedly have caused him to suffer a loss of health benefits for him and his wife, given the fact that in July 1997 he had not attained a "medical benefit eligibility age of 55." As justification for his "fear," the Claimant cited a situation involving a non-agreement employee named Fransconi (See Grother Ex. E-2, Exh. 35). The Claimant further charged that at time of his transfer to Houston, both Packard and his new "supervisor," Don Fryar, "cautioned" him to take the demotion, and not pursue any "lawsuits," because the Carrier would otherwise make it "unbearable" for him (See pp. 1-2 of Grother's Verified Statement-Laches).

Accordingly, in view of the above, and based on the comprehensive arguments and evidence as set forth in detail in the entire record before this Arbitration Committee, the Claimant urges that the Committee find: (1) Claimant was adversely affected as a result of the Carrier's implementation of the STB-approved merger with the Southern Pacific Rail Corporation; (2) Claimant was an employee within the meaning of 49 U.S.C. 11326 and New York Dock at the time of adverse effect; and (3) the instant claim should not be barred by laches given the Carrier's knowledge of a claim dating back to July 15, 1997 and in view of the fact that the Claimant's "delay" in perfecting a specific claim under the New York Dock conditions was not prejudicial to the Carrier.

B. The Carrier Member

It its post-hearing brief, the Carrier addressed the three issues for resolution by this Committee, in the order in which they were discussed at the arbitration hearing. As the hearing

record so indicates, the questions involving (1) causality (merger); (2) jurisdiction (employee status); and (3) procedure (laches), were confronted in that order.

In its post-hearing brief, the Carrier initially commented that the Claimant's submission of his New York Dock claim to the UP's Law Department instead of to the Labor Relations Department was procedurally wrong. However, the Neutral/Referee Member notes that such error was deemed by the Carrier to be more of a procedural "misstep" than fatal error.

Specifically, the Carrier emphasized that with respect to its procedures for handling claims arising under protective conditions such as New York Dock, the Carrier's Labor Relations Department, and not its Law Department has customarily handled all claims, disputes and issues related to employee protection. Thus, states the Carrier, the Claimant's apparent view that the Law Department was the proper forum for adjudicating his May 12, 2003 claim under New York Dock was incorrect from the standpoint of procedure. However, from the record before us it is clear that the Carrier's key procedural argument rests on the laches doctrine, given the Claimant's 70-month delay in submitting his claim for relief under the New York Dock conditions.

Furthermore, in response to an additional procedural matter raised by the Grother Member, with regard to the Carrier Member's standing on this Arbitration Committee, the Carrier sharply contends that, as the Carrier's General Director of Labor Relations, the Carrier Member's assignment to this Committee was consistent with his customary responsibilities in Labor Relations which, as developed in the record, includes participating as a Carrier advocate in labor claim matters progressed to arbitration. In a related vein, on page 13 of its post-hearing brief, the Carrier stressed that "this arbitration case has been handled in the usual and customary manner." Specifically, the Carrier Member asserted that the parties' simultaneous exchange of *ex parte* submissions, followed by hearing and rebuttal briefs limited to reinforcement of prior

argument, but no new evidence or new argument, was consistent with the railroad arbitration procedures set forth in the Railway Labor Act as opposed to a "three-step" process of exchanging submissions advocated by the Claimant purportedly under STB procedural guidelines.

Returning to the three issues precisely before this Board, the Chair notes that like the Claimant, the Carrier, in its pre-hearing submission, testimony at the arbitration hearing, and post-hearing brief, has presented to this Committee detailed arguments and evidence in what it argues is overwhelming support for its position that the Committee should deny the instant claim for reasons of both procedure (laches) and substance (jurisdiction and causality).

The Carrier submits that the Claimant's assertions that his demotion from the position of Senior Manager Terminal Operations (SRMTO) to Manager Intermodal Operations at Houston, TX was solely merger related was not proved by him, irrespective of whether the Claimant was, in fact, an "employee" or "subordinate official" at the time, which the Carrier has consistently denied. Relying on the testimony at arbitration of the Claimant's then supervisor, Service Unit Superintendent Ken Packard, on page 2 of its post-hearing brief, the Carrier emphasized:

> "...Mr. Grother had not been demoted because of the issue with Phoenix. He stated 'the service issues and everything, they were insurmountable no matter who was in charge.' He testified the real reason for the demotion was Mr. Grother's lack of performance on the job. In his words, 'John wasn't up to the charge...' During cross examination by Mr. MacDougall, Mr. Packard reiterated that Mr. Grother's demotion did not occur as a result of the movement of Phoenix switching into Tucson."

Furthermore, the Carrier asserted that inasmuch as the switching experiment took place on the former territory of the Southern Pacific Rail Corporation, the Carrier's decision to move the switching from Phoenix to Tucson could have been made by the SP prior to the merger, and thus, was not a "merger dependent" operational change, as the Claimant has essentially contended. Moreover, for reasons stated in detail in its pre-hearing and post-hearing

submissions, the Carrier asserted that certain information contained in the Labor Impact Exhibit filed by the merger applicants did not support the Claimant's opinion that that his demotion was a direct result of the merger in light of the situations at both Phoenix and Tucson. In sum, the Carrier stressed that a comprehensive review of the entire record of this case by the Committee should support a determination that the Claimant, even if he were an employee or subordinate official, did not sustain his burden of proof as regards the causality issue.

Regarding the second issue of whether the Claimant's status at the time of the September 11, 1996 merger implementation was that of an "employee" for purpose of eligibility for a displacement allowance under the New York Dock conditions, given the clear facts in this case, the Claimant did not hold a position of employee or "subordinate official." The Carrier emphasizes that the historical meaning of the terms employee and subordinate official have been derived from federal legislation applicable to the railroad industry involving labor protection coverage issues such as this, and as further clarified by numerous awards rendered by arbitration committees convened on this Carrier's property as well as on other railroads. The "the real test for coverage under the New York Dock conditions is whether a person is considered to be an official," the Carrier states. (See Carrier's post-hearing brief, p. 4). According to the Carrier:

> "Only those persons who are covered by a collective bargaining agreement, or those non-agreement persons determined to be subordinate officials, are employees under the RLA. In each of the NYD awards cited by UP, the arbitration committee's decision hinged on whether a non-agreement person was an official."

The Carrier has argued throughout this matter that, based on the duties and responsibilities traditionally associated with the SRMTO position held by the Claimant at the time of the transaction implementation, it would be highly erroneous for this Committee to ultimately find in favor of the Claimant with respect to its determination on the "employee"

(jurisdictional) issue. Indeed, the Carrier reminds the Committee that "use of the term 'employee' in New York Dock is tied to the use of the term 'employee' in the RLA." Indeed, in Carrier Exhibit 51, a 25-page recent award rendered by Referee Suntrup, the Carrier emphasizes that an employee holding the non-agreement title of "project manager," was found to not have met the definition of a "displaced employee" under Article IV of New York Dock.[10] Thus, the Carrier reasons that the position of Senior Manager Terminal Operations (SRMTO), held by the Claimant the time of his demotion, should be regarded as an official position because it never has been covered by a collective bargaining agreement on either the Southern Pacific or Union Pacific railroads, and furthermore is a position that has never been deemed eligible for unionization on either railroad.

The Carrier furthermore urges the Committee to consider the Claimant's request for coverage under the New York Dock conditions in light of whether the Claimant meets the test of coverage with respect to whether the position he had occupied at the time of the merger transaction was that of an "official," as opposed to an "employee," or "subordinate official." According to the Carrier, specific language contained in the Railway Labor Act excludes officials from the definition of employees covered by the Act. The Carrier additionally argues that this Committee should be cognizant of the holdings made by the ICC in its Ex Parte No. 72 decisions. Therein, according to the Carrier, the ICC has consistently held that employees occupying the position of "trainmaster" have been viewed as holding "official" positions. Here, the Claimant held a higher level position of SRMTO, whose key function was to supervise trainmasters, or their equivalent the UP's MYO's, as will be further discussed below.

The Carrier points out that on page 2 of the Claimant's Verified Statement-Job Classification, the Claimant substantiated his place in the Carrier's managerial hierarchy at

[10] See Trans. Comm. International Union vs. Burlington Northern Santa Fe Railway Company (Suntrup; 7/14/04).

Tucson by admitting that beginning on September 16, 1995 (one year prior to the merger), his title at Tucson was that of Terminal Superintendent and, in that capacity, three trainmasters had reported to him. Moreover, according to the testimony of Carrier Witness Packard, when the title of Trainmaster at Tucson (former SP territory) was subsequently changed to the UP's title of Manager Yard Operations (MYO), the MYOs, in turn, still reported to the Claimant, whose title had also been similarly changed from the SP title of Terminal Superintendent to the UP title of Senior Manager Terminal Operations (SRMTO). Thus, given the facts of record, as admitted to by the Claimant, and as corroborated by the credible testimony of Carrier Witness Packard, the Claimant's position was unquestionably managerial, or official, given his supervisory responsibilities over the MYOs, formerly "trainmasters." Thus, the Carrier stresses that the Claimant's position that he was merely a "titular head of the terminal" who provided "trainmaster relief" is inconsistent with the actual record in this case, and should be rejected by the Committee.

The Carrier additionally maintains that the record clearly establishes that prior to his demotion to Houston, as the SRMTO at Tucson, the Claimant "was neither being paid, nor expected to perform the duties of the lower rated MYO position." Even if he voluntarily performed such duties, such as "trainmaster relief," such duties would still be consistent with those of a class of employee (used in the general sense) excluded from the category of "subordinate official" pursuant to the Railway Labor Act, and as determined by the ICC Ex Parte No. 72 decisions, which again, set the bar below the level of trainmaster. In sum, therefore, consistent with the relevant arbitral precedent established through the numerous awards of previous New York Dock arbitration committees that have considered this very

issue[11] this Committee should so similarly find that the Claimant in this case was neither an employee nor subordinate official for purpose of New York Dock coverage or eligibility given the SRMTO managerial position he held at Tucson.

Turning to the third issue involving the Carrier's contention that this claim is procedurally barred from this Arbitration Committee's consideration under the equitable doctrine of laches, the Carrier member emphasized at arbitration that the Claimant's argument that his July 15, 1997 letter to President and C.E.O. Davis somehow preserved his procedural right to advance a specific claim under the New York Dock conditions some 70 months later, on May 12, 2003, should be rejected in its entirety. Indeed, the Carrier points to the Claimant's own Reply Verified Statement-Laches, Exhibit GH-28, p. 13, in which the Claimant "admitted" he did not "label" his original letter (to C.E.O. Davis) as a dispute arising under New York Dock.

The Carrier argues that the Claimant's apparent belief that time limits do not apply to the initial submission of claims under the New York Dock conditions is completely without foundation, and it emphasizes that the lack of a specified time limit does not militate against his extraordinary delay in the filing of his claim. Citing numerous awards of prior arbitration committees that have indeed dismissed similar claims because the employees involved in those disputes were found to have waited an unreasonable length of time before initiating their New

[11] See B. J. Maeser, T. P. Murphy, E. M. Sengheiser and K. W. Shupp v. Union Pacific Railroad Company, et al. (Seidenberg; 12/18/87); John F. Adams, Joseph Dominick and James Williamson v. Delaware & Hudson Railway Company (O'Brien; 10/22/87); Gerald Thomas and Brotherhood of Locomotive Engineers v. Union Pacific Railroad Company (Stallworth; 4/5/88); James V. Nekich v. Burlington Northern Santa Fe Railroad (VerPloeg; 12/6/96); Ross F. Povirk and the Transportation and Communications International Union-ASD v. Union Pacific Railroad Company Southern Pacific Railroad Company (Stallworth; 7/16/98); G. L. Dixon and the Transportation and Communications International Union-ASD v. Union Pacific Railroad Company Southern Pacific Railroad Company; (Stallworth; 7/16/98); and B. W. Isabell and the Transportation and Communications International Union-ASD v. Union Pacific Railroad Company Southern Pacific Railroad Company; (Stallworth; 7/16/98).

York Dock claims, and such delays were to prejudiced the Carrier,[12] the Carrier urges that this Committee make a similar determination here, given the nearly six year delay that preceded the Claimant's filing of his specific claim under New York Dock.

In response to the Claimant's argument that his delay in filing was justified by a legitimate fear of "some sort of" retaliation by the Carrier, the Carrier states that (1) the Claimant's "belief" that the Carrier would have discharged him for filing such a claim, before attaining the age of 55, resulting in his loss of certain medical benefits, was completely speculative and totally unfounded; (2) certain executives, whom the Claimant had identified in his Carrier correspondence as having knowledge of his dispute, had, in fact, left the company between 1997 and 2003; and (3) many of the documents and records relating to 1997, for example personnel form 15121, referred-to above, were no longer available, again, given the substantial passage of time from the date of the demotion to the date of his claim filing.

Last, the Carrier opines that the Claimant's "long delay" in submitting a claim under the New York Dock conditions furthermore worked to his advantage by virtue of the non-agreement compensation and relocation benefits paid to him for his relocation from Tucson to Houston. Thus, the Carrier asserts that in the event this Committee should find that the Claimant was covered by New York Dock, the Carrier should, in turn, be permitted to recover the salary and moving expenses paid to the Claimant as part of his non-agreement benefit package[13] that would have exceeded the moving expense benefits normally paid to employees covered under the New York Dock conditions.

---

[12] United Transportation Union v. Union Pacific Railroad Company (LaRocco; 8/27/93); Southern Railway Company v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (Muessig; 2/13/90); and Transportation-Communications International Union v. Union Pacific Railroad Company (LaRocco; 6/26/90).

[13] According to the Carrier, in addition to moving expenses received, the Claimant received $10,857.50 in salary and expenses related to the relocation to which he would not have been entitled had he been similarly compensated under New York Dock (Union Pacific Exhibit 43).

82

Therefore, based on the above and for all the reasons set forth by the Carrier, both orally an in writing, prior to and during the arbitration hearing, and thereafter in its post-hearing brief, the Carrier requests that the Committee find that: (1) the Claimant's claim was time barred under the equitable doctrine of laches; and (2) at the time of his demotion, the Claimant was not a "displaced employee" subject to the jurisdiction of New York Dock, and hence, his demotion was not "merger-related."

VI. DISCUSSION AND FINDINGS

As set forth in detail above, the instant case before this Arbitration Committee involves a claim by non-agreement Claimant, John E. Grother, for a displacement allowance under the New York Dock conditions, imposed by the STB on August 6, 1996, in Finance Docket No. 32760, the merger application filed by petitioner railroads, Union Pacific Railroad Company and Southern Pacific Rail Corporation. It is essentially not disputed that, on the September 11, 1996 merger implementation date, the Claimant held a non-agreement position of Senior Manager Terminal Operations (SRMTO) at Tucson, AZ. Subsequent to the date of merger, on July 1, 1997, the Claimant was transferred to a lower paying position of Manager of Intermodal Operations at Houston, TX. Despite the fact that the Carrier viewed that transfer as a demotion, the Claimant received relocation benefits and other compensation as a result of the move.

The Claimant strongly contends that, at the time of his relocation to Houston, which he subsequently regarded as a "displacement," as opposed to a "demotion," the Claimant did not hold an "official" position, as the Carrier has argued. Furthermore, the Claimant asserts that he consequently was entitled to a displacement allowance under the New York Dock conditions given the fact that his transfer was involuntary and he was placed in a worse position with respect to his earnings. In the Claimant's view, he has amply carried his burden of proving that

the Carrier's action as regards his transfer to Houston was solely attributed to the Carrier's implementation of the UP/SP merger on the former SP territory.

With respect to the issue of the nearly six year delay in filing the instant claim asserting an entitlement to benefits under the New York Dock conditions, the Claimant has consistently argued that, for the reasons discussed above, this Committee should not regard the delay as fatally detrimental to his claim from the standpoint of procedure. Therefore, the Arbitration Committee should adjudicate this claim solely on its merits, the Claimant emphasized.

Conversely, the Carrier contends that procedurally, the Claimant's six-year delay is excessive, and citing the prior awards on that point, urges the Committee to dismiss the claim outright under the laches doctrine. According to the Carrier, the Claimant simply waited too long, and such delay was prejudicial to its ability to defend itself against the significant liability claimed.

With respect to the substantive issues of jurisdiction and causality, the Carrier asserts that the claim should be denied, and as noted above, has supplied numerous awards of previous arbitration committees in support of its contention that the Claimant's position of SRMTO met the test of an official position as opposed to that of an employee or subordinate official. Thus, because the New York Dock conditions do not apply to the Claimant, the reason for his transfer technically is irrelevant to the dispute.

The Committee has undertaken a painstaking review of the evidence, documentation and arguments extensively set forth by the partisan members with respect to the issues of procedure, jurisdiction and causality. As a result of that review, the Neutral/Referee Member finds that the Carrier has met its burden of proving that the instant claim should be dismissed under the equitable doctrine of laches.

24

The Claimant's nearly six-year delay in perfecting a claim for benefits under Article IV of the New York Dock conditions was grossly excessive, given the facts of record before this Committee. Furthermore, upon due study of the record, the Neutral/Referee Member finds that the explanations proffered by the Claimant in his attempt at justifying the substantial delay were not supported by probative evidence and simply do not mitigate the 70-month delay. Moreover, because of the extent of the liability which the Claimant calculated as having accrued beginning on July 1, 1997, and continuing for the six years thereafter, as previous awards have held, by the time the Carrier had received such claim its ability to defend it or somehow stem the accruing liability was seriously diminished.

The Neutral/Referee Member notes that given the existence of substantial relevant arbitral precedent on both the procedural and substantive issues before this Committee, with particular emphasis on the laches issue before us at this point in the discussion, the majority's determination as to the laches question must reflect its review of that precedent, with the resulting finding not inconsistent therewith.

Second, as regards the jurisdictional issue of whether the Claimant was an "employee" or "subordinate official" at the time of his transfer, without retreating from the threshold procedural determination as to laches, the Neutral/Referee Member finds that, based on the evidence of record and the relevant precedent identified by the Carrier, the Claimant, at the time of his transfer, was not an employee or subordinate official under the New York Dock conditions. See the Carrier's extensive discussion of the history of the term "employee" under New York Dock, railroad labor legislation, and the awards of numerous New York Dock arbitration committees on pages 8-20 of its pre-hearing submission.

Third, with respect to the issue of causality, given the majority's finding that the claim is barred by laches and its merits determination as to coverage, the issue of causality or nexus is

essentially moot. This is so because of the majority's findings that the Claimant had no standing under Sections 1.(b) and (c) of New York Dock given the SRMTO position he held at the time of the transfer. Hence, the Committee need not evaluate whether the Claimant met the burden of proof specified in Section 11. (e), that is, "to identify the transaction and specify the pertinent facts of that transaction relied upon." Indeed, any question as to what prompted the transfer, or demotion, in light of the Claimant's non-coverage under New York Dock is simply not relevant to the outcome of this dispute, and consequently, the Carrier would not be required "to prove that factors other than a transaction affected the employee."

Now giving more detail to the threshold procedural issue of laches, it is clear from a careful review of the record that the Claimant did not perfect any claim under Article IV of New York Dock until his May 12, 2003 (46-page) letter to James V. Dolan, the Union Pacific's Vice President of Law. In that letter, as opposed to the one he had sent 70 months earlier, on July 15, 1997, to President and C.E.O. Davis, the Claimant clearly asserted, both in a bold-type heading and in the opening paragraph of the letter, that the intent of his letter was to notify the Carrier of a "New York Dock Arbitration Dispute." Furthermore, the Claimant stated and that he was seeking benefits as a "displaced employee" under New York Dock as a result of a merger-related transaction. (Union Pacific Ex. 2; Grother Ex. E-2).

In light of the above, the majority cannot agree that, under the facts present in this dispute, the Claimant's submission of the 1997 letter in any manner whatsoever constituted his timely notification of a New York Dock dispute with the Carrier. Furthermore, following the Committee's careful review of the specific statements made in that July 15, 1997 letter, the majority holds there is nothing contained therein that would in some way preserve the Claimant's right to submit a New York Dock claim some 70 months later.

In a similar vein, the Claimant's argument that the absence of any time limit for filing a claim under Article IV of the New York Dock conditions, especially given the fact that he was not represented in this proceeding by any labor organization, presumably preserved his right to file a claim at a much later date, is not supported by any credible proof. Again, and from a slightly different angle, the majority notes that the Claimant's 1997 letter to C.E.O. Davis essentially is an expression of his concern about his "downgrade" from his management position of SRMTO at Tucson, to the lower level position of Manager of Intermodal Operations at Houston. Furthermore, in that same letter, the Claimant implied he was treated in a discriminatory manner, and asserted that he was not aware of any personal performance issues that would have justified such a transfer. Davis' response was essentially that there were many factors contributing to the problems at Tucson and that one of the strategies toward correcting those problems was a change in management staffing, which Davis acknowledged is sometimes difficult to comprehend. The Committee further notes that its jurisdiction is confined to the issues set forth in Section II, Statement of the Issues, above.

Moreover, the Neutral/Referee Member notes that in the Claimant's July 15, 1997 letter, the Claimant furthermore wrote to President Davis about his dissatisfaction with his demotion and essentially attempted to enlist his help in obtaining a comparable management position in Arizona, as opposed to Houston. Therein the Claimant expressed "the hope that I could possibly retain some type of MTO position (if not the senior MTO) in the Arizona area and without the 21% wage reduction..." Clearly, based on the specificity of that request for a comparable management-type position, and preferably at a senior level, the focus of that letter was to enlist Davis's aid in securing a management position to which he was accustomed to working as opposed to any obtaining benefits as an employee or subordinate official under the New York Dock conditions.

Thus, the majority concludes that until its receipt of the May 12, 2003 claim specifying a request for accrued benefits under New York Dock, the Carrier had no knowledge of any pending claim from the Claimant seeking some measure of compensation under the New York Dock conditions. The Neutral/Referee Member accordingly finds merit to the Carrier's argument that when it received the Claimant's request for over $107,300.00 in New York Dock benefits over the course of the previous 70 months, it essentially was "hit from behind," and thus unfairly placed in a position in which it could neither mitigate nor stem the liability.

Indeed, in an on-property case involving a similar delay in filing a claim under the New York Dock conditions, Referee Rehmus found that "a nearly six-year unexplained delay in filing this claim...creat(ed) possible increased financial liability to the Carrier that cannot now be avoided or offset, (and) fatally prejudices it." See Transportation-Communications International Union v. Union Pacific Railroad Company (Rehmus; 12/30/92). That award is particularly applicable here, where the record is devoid of any probative evidence justifying the Claimant's nearly six-year delay in filing a claim under New York Dock.

Moreover, further arbitral support for the majority's determination that the Claimant's extraordinary delay permanently bars this claim, under the equitable doctrine of laches, is found in the following awards cited by the Carrier: United Transportation Union v. Union Pacific Railroad (LaRocco; 8/27/93); International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers v. Southern Railway Company (Muessig; 2/23/90); Transportation-Communications International Union v. Union Pacific Railroad Company (LaRocco; 6/26/90); and Certain Designated Claimants v. Union Pacific Railroad Company (Seidenberg; 5/18/87). Referee Muessig stated in his February 13, 1990 award that a nearly three year delay in filing for New York Dock protective benefits was unreasonable, as follows:

> "Certainly the doctrine of Laches has been recognized in this industry as well as by other arbitral precedent to bar claims filed beyond a reasonable time period. The theory underlying the Laches doctrine is that the failure to litigate a claim presently by deferring action until some unspecific but distant time in the future result in bias or prejudice the party against whom the claim is ultimately filed. The purpose of Laches is to bar the submission of stale claims. Clearly, in employee protective matters, it is critical that claims be filed without delay. In the cases at hand, and while we have fully considered the General Chairman's aggressive and skilled comments before us, the Claimants' failure to act in a timely manner precludes consideration of the issue at hand."

Here, the majority finds that, upon its careful review of the record, the Claimant's excuses for his delay in submitting his claim in a timely manner were not backed by any credible proof. From the majority's review of the record, there simply is no real evidence to support the Claimant's contentions that a timely filing of his claim would have subjected himself to "retaliatory discharge," loss of health benefits to him or his wife, or other punitive actions. Such serious allegations must be backed by credible proof, the Neutral/Referee Member emphasizes, especially in a situation such as this, where the delay was far in excess of the delays involved in the on-property arbitration cases cited above, with the exception of the 1992 Rehmus award, which, again, dismissed an on-property claim for protective benefits under New York Dock when that claim was submitted nearly six years after the date of the merger involved in that case.

The Claimant's six-year delay in filing his claim parenthetically coincided with the maximum period of benefit entitlement under New York Dock, the majority of this Committee notes. Thus, the Carrier's position that it was essentially blindsided by the Claimant's six-year cumulative request for $107,370.00 in New York Dock benefits is well founded, and such tactic runs contrary to a management goal of achieving "stable and predictable railroad labor-management relations," as Referee LaRocco pointed out in his June 26, 1990 award, cited above. In sum, the majority finds that the Claimant's delay was not satisfactorily justified by

the evidence of record, and such delay did prevent the Carrier from taking any measures toward resolving the matter outright, reducing the liability, or alternatively, constructing a vigorous defense with still-available documentation and personnel. The Carrier's position as to the manner in which it was prejudiced by the Claimant's protracted claim filing is succinctly set forth on page 10 of its post-hearing brief:

> "...Had Mr. Grother identified his 'dispute' as one involving New York Dock, the parties could have scheduled a conference and discussed the facts. Either party could have referred this dispute to arbitration if it had not been settled within 20 days after the dispute arose. Has (sic) that happened, this matter would have been settled at least five years ago, when the players and the papers involved were still available. By not labeling his dispute as one involving New York Dock until nearly six year after his demotion, Mr. Grother seriously disadvantaged UP's ability to defend itself."

Last, even if this Committee were to regard the Carrier's "laying behind the log" metaphor to be a bit hyperbolic, the majority nonetheless is convinced of the correctness of the Carrier's argument that the loss or dissipation of records, fading memories, and personnel turnover over the period of time covering the nearly six-year delay were inevitable workplace realities that had a chilling effect on the Carrier's ability to appropriately defend itself against the sizeable claim submitted by this Claimant. Thus, for all of the reasons set forth above, the Neutral/Referee Member holds that the Carrier met its burden of proving, by substantial evidence, that the instant claim should be barred from consideration on the merits under the equitable doctrine of laches.

The majority's determination as regards the procedural threshold issue of laches is dispositive of this case, as stated earlier. However, without retreat from the foregoing, and in the event the majority had reached an alternative finding, we nonetheless conclude that the record before us is replete with evidence that, with respect to the question of coverage, at the time of the Claimant's transfer from Tucson, AZ, to Houston, TX, the Claimant was neither an employee

nor subordinate official for the purpose of entitlement to a displacement allowance under Article IV of New York Dock. In that regard, the Neutral/Referee Member relies particularly upon the Claimant's own description of the characteristics and responsibilities of the SRMTO position he held at the time of his transfer, and the description of the Claimant's duties as SRMTO as set forth by the Carrier on page 21 of it pre-hearing submission, and as emphasized by Carrier Witness Packard during the arbitration hearing.

In the second sentence of the first paragraph of his May 12, 2003 claim for benefits under New York Dock, the Claimant clearly considered himself as a manager, and moreover, as someone who had been selected for many promotions. Indeed, based on that document, it is clear to the majority of this Committee that the Claimant regarded himself as a member of SP's management team, stressing that, when selected for the position of Terminal Superintendent (later, SRMTO), he had essentially been given the responsibilities of "senior officer" at Tucson. The Neutral/Referee Member further finds that, as the facts of record indeed have made plain, at the time he actively began to pursue his claim for protective benefits under New York Dock, his portrayal of himself was "downgraded" to that of a mere "order taker" at Tucson, whose primary function was to provide "vacation relief." Such a belated assessment of his responsibilities at Tucson at the time of the transfer is less than credible and hardly constitutes persuasive evidence that the Claimant was an employee or subordinate official at the time of his July 1, 1997 transfer to Houston, the majority stresses.

Thus, notwithstanding the laches bar to this claim, the majority concludes that the evidentiary record is completely lacking in any evidence to support the Claimant's contention that the SRMTO position he occupied was that of a subordinate official subject to unionization under the Railway Labor Act. Indeed, as stated above, on page 21 of its pre-hearing submission, the Carrier set forth the primary responsibilities of the SRMTO position, and Packard's own

recitation of the relevant duties of the SRMTO were not inconsistent with the Carrier's list. Indeed, according to Carrier Witness Packard, the Claimant was responsible for (1) terminal operations; (2) safety; (3) budgeting; (4) the "transportation product" at Tucson; (5) hiring recommendations; and (6) conducting disciplinary hearings and making disciplinary recommendations. (See transcript pp. 69-70; 84-86). The above duties and responsibilities are consonant with those of a management-level employee above the rank of what the Railway Labor Act intended to be a "subordinate official," the majority holds. As arbitral support for our findings here, see, in particular, Gerald Thomas and Brotherhood of Locomotive Engineers v. Union Pacific Railroad Company (Stallworth; 4/5/88), which answered, in the negative, the question of whether a Manager of Labor Relations on this Carrier was an employee subject to the protection under New York Dock and thus entitled to protective benefits.

Based on the foregoing, even fewer comments are necessary with respect to the question of causality, given the majority's first finding as to the procedural bar of laches, and its second finding as regards "employee." Given the majority's ruling that, notwithstanding the procedural bar, the Claimant was not an employee, it is emphasized here that he moreover does not meet the definition of a "displaced employee," as defined in Section 1. (b), despite the Claimant's valiant efforts to convince a majority of this Committee that the duties he performed in actuality, fell within a class of employees deemed by the Railway Labor Act as eligible for unionization.

Therefore, in light of the facts of record, the Claimant was not entitled to protection under Article IV, above, and the question of whether his transfer stemmed purely from the merger transaction itself, or was attributed to other reasons, is immaterial, and the Committee need not determine whether the parties met their respective burdens of proof as regards the causality issue.

Last, the Neutral/Referee Member is aware that, both during the arbitration hearing and in the post-hearing briefs, the parties made reference to the issue of whether there was a

statutory duty, under the Railway Labor Act, to conference this matter before the Claimant's decision to invoke arbitration and, if so, whether that duty was appropriately fulfilled. Given the majority's findings, as set forth in detail above, it clearly is unnecessary for that issue to be addressed by this Committee, for the predominant reasons that: (1) such issue was not formally raised by the Carrier as a statutory bar to arbitration; and (2) such argument was not fully developed by either of the partisan members of this Committee either prior to or during the arbitration hearing.

Furthermore, the Neutral/Referee Member holds that upon careful review of the record and all of the correspondence which ultimately led to the holding of the instant arbitration hearing (and the procedures for conducting same), both parties were afforded their respective due process rights. In sum, neither party was placed at any advantage or disadvantage with respect to the procedures governing this arbitration.

Therefore, in response to the questions put before this Arbitration Committee by the Claimant, the majority answers as follows:

1. Whether employee was adversely affected as a result of the STB-approved merger. **Claimant was not adversely affected by the merger.**

2. Whether the involved employee was an "employee" within the meaning of 49 U.S.C. 11326 and NYD at the time of first adverse effect. **Claimant was not an employee within the meaning of 49 U.S.C. 11326 and the New York Dock conditions.**

3. Whether employee's request for compensation/benefits under NYD was so unreasonably delayed as to be barred by the doctrine of laches. **Claimant's request is barred by the doctrine of laches as a result of his nearly six-year delay in filing.**

In response to the questions placed before this Arbitration Committee by the Carrier, the majority responds as follows:

1. Was John E. Grother, at the time of his reduction in salary, a "displaced employee" subject to the protection of the New York Dock conditions? **No.**

2. Is John E. Grother's claim for a displacement allowance pursuant to New York Dock barred under the doctrine of Laches? Yes.

VII. AWARD

For the reasons set forth above and incorporated herein as if fully rewritten, the subject claim is hereby denied in its entirety.

Lynette A. Ross
Neutral Member

I Dissent- John E. Grother
John E. Grother
Grother Member 1/6/2005

William E. Loomis 1/4/2005
Carrier Member

Dated: December 21, 2004

VERIFIED STATEMENT
OF JOHN E. GROTHER

(Causality)

My name is John E. Grother. I am employed by Union Pacific Railroad Company (UP) as a Manager of Intermodal Operations at Houston, TX. I have held this position since July 1, 1997, when I was displaced as Senior Manager Terminal Operations (SRMTO) at Tucson, AZ. I suffered a reduction in pay and benefits by my displacement and transfer from Tucson to Houston.

My railroad experience began June 1, 1969, with the former Southern Pacific Transportation Company (SP) as a non-agreement employee. I have remained non-agreement during the course of my career, which has been continuous since 1969. Most of my job experience has been operations. I transferred from SP in San Francisco to become a SP Terminal Superintendent at Tucson, AZ, effective September 16, 1995.

This verified statement is to explain the nexus between the UP/SP merger, and my displacement from SRMTO at Tucson. The displacement was the result of the implementation of the merger transaction; my displacement, contrary to UP, was not due to "performance standards" (Ex. E-4), although in my view merger causality and performance standards are not necessarily inconsistent concepts. A map of the area between El Paso and Yuma, listing the intermediate stations, is set forth as Atta. 1.

The UP/SP merger was consummated September 11, 1996. After the merger, UP established new territories and commenced to implement the merger in stages. The result was a merger transaction yard consolidation directive, to carry out the operating plan set forth in the merger application. As shown in Ex. E-19, at p.

416, taken from the merger application, two non-agreement employees were to have their jobs abolished at Phoenix (which were stated to me as Phoenix SRMTO position and vacant Manager Yard Operations (MYO) position), with the consolidation of the Phoenix terminal switching into Tucson. Three non-agreement jobs would be transferred from Tucson and two would be abolished, all in year one. (Ex. E-19, p. 417). Thus, the UP merger plan stood to adversely affect non-agreement employees, and that is what occurred in 1997, and I was one of those so affected.

In accordance with the "Re-Plan" at Phoenix, all terminal switching at Phoenix was to be transferred to Tucson. The term "Re-Plan," as it affected intermodal business, is also identified in the UP progress report to the STB, dated July 1, 1997. (Ex. E-21, p. 30).

The UP plan would require 71 additional Enginemen, and 79 more Trainmen, all at Tucson. In operating parlance, the term Trainmen includes Locals, Road Switchers, over-the-road Trainmen and Yard Switchmen, for planned yard consolidation at Tucson. (Ex. E-19, pp. 412, 421). The UP plan, as found by the STB's Section of Environmental Analysis, projected a 61% increase in Trains/Day between Picacho and Tucson, and a 51% increase in Trains/Day between Tucson and Cochise, AZ. (Ex. E-20, pp.2-5, 2-11).

Several former SP employees, both agreement and non-agreement, warned UP that the failure of the proposed yard consolidation merger transaction experiment was imminent, because Tucson could not absorb a more than tripling of flat switching in a yard with a 1% grade, and where most cars had to be shoved to a joint during switching to insure "no run-away cars over the West end derail,"

at 45 MPH. I made a study of cars in the Tucson yard to be switched, both before and after the "experiment," which indicated cars available for switching increased more than three-fold. This is depicted in Atta. 2. My study shows there were an average of 188 cars to be switched in the mornings leading up to the "Re-plan," and 612 cars on a typical day thereafter. My working papers are available for examination.

I was not involved in formulating the "Re-Plan." It came from the "planners" or others. I and others gave our negative views, but they were not considered. It is likely the operating decision was made in Omaha, or elsewhere.

I was not interviewed for my UP title conversion, as other non-agreement personnel in operations at Tucson or elsewhere. It was given to me on April 16, 1997. (Ex. E-2, p. 27; Ex. E-2{7}).

The consolidation or "Re-Plan" experiment began April 13, 1997, and ended June 26, 1997, when I was advised to either quit or take a severe $1,272 per month cut, with transfer to Houston.

This advice came to me on June 26, 1997, first from Thomas F. Murphy, who was UP Asst. Regional VP at Roseville, while he was visiting Tucson. He said the "Re-Plan" experiment had failed, and that it was over that day. I was told I no longer would be at Tucson, effective July 1, 1997. He added that UP wanted its own managers on the "Sunset Route," and directed me to see Service Unit Superintendent Ken Packard, who was based at Tucson. Packard confirmed that the "experiment" had ended, and that I would no longer be a SRMTO at Tucson. He told me about my new assignment, two grades lower, at Houston, or quit. He said UP wanted its own people at Tucson.

The Tucson yard consolidation experiment became another of the 1997 UP service failures, exemplified by a system-wide series of STB proceedings, customer law suits, and settlements.

In addition to the more than tripling of cars to be switched at Tucson, the terminal was surrounded by two 12-hour MofW curfews (one in each direction) which meant trains could not operate in or out of Tucson for 12 hours. After the MofW curfews cleared, the westbound and eastbound fleets of trains were trying to get through Tucson, followed by trains already held at Tucson. It was an impossible task to place multiple tracks of Phoenix switching into the Tucson yard trackage which was already almost at capacity.

1. As a direct result of the Merger Phoenix Re-Plan, and subsequent failure, UP in 1997 activated a "But For Corporate Culture" of the gunslinger, who shot a person first and asked questions later. This is illustrated in articles by Daniel Machal-aba for the Wall Street Journal, with the "dysfunctional culture." (Ex. E-2{13}). Accordingly, "But For" the merger yard consolida-tion experiment, which UP highlighted as a positive step to the STB on July 1, 1997, I would not have become a displaced employee on July 1, 1997, and required to transfer to Houston to maintain my employment relationship.

2. The causal connection between the merger and my displace-ment is further illustrated by the UP's Ombudsman & Director of Ethics. (Atta. 3):

> The choices and decisions made during that merger period were difficult for many people.

3. UP's President & CEO, Jerry Davis, made it clear that the problems at Tucson in June 1997 required a management change. These problems, of course, were the result of the merger, and the its implementation Re-Plan. (Atta. 4).

4. I have been advised by UP that I was displaced at Tucson based upon "performance standards." (Ex. E-4). However, no oral counseling or coaching was received before I was advised on June 26, 1997 to quit or accept a wage reduction and transfer to Houston. I did not receive a written interim Performance Development Review for 1997 at any time indicating poor personal performance. I did not receive a written final Performance Development Review for 1997 indicating at any time poor personal performance.

In my opinion, the alleged "performance standard" basis for my displacement is an after-the-fact rationalization. I appreciate that the operational changes contemplated and brought about by UP/UP merger may have caused changes in the requirements and abilities for an employee to hold a given position, due to operational changes in the requirements and abilities required for that position. (Ex. E-2{14}). I do know that my replacement at Tucson (coming from the UP side of the merger) received a higher initial salary than I had been receiving at Tucson, after I was displaced to Houston. However, even in a situation where there may be change in job requirements, forcing displacement to a different position, the announced UP policy in most cases was to maintain the salary level at the new position, apart from any New York Dock requirement to do so. (Ex. E-2, p. 18).

VERIFICATION

STATE OF TEXAS)
COUNTY OF HARRIS)

Under the penalties of perjury, I hereby affirm the foregoing verified statement is true and correct as stated.

JOHN E. GROTHER

Dated at
Houston, TX
September 14, 2004

VIA CERTIFIED MAIL FOR DELIVERY OF OFFICIAL NOTIFICATION OF NEW YORK DOCK ARBITRATION DISPUTE

TO: MR. JAMES V. DOLAN
UP COUNSEL AND DOS
ROOM 830
1416 DODGE STREET
OMAHA, NE 68179

May 12, 2003

LAW DEPT.
MAY 16 2003
REC'D UPRR

I AM IN THE PROCESS OF RETAINING A LAWYER TO REPRESENT MYSELF FOR A POTENTIAL NATIONAL MEDIATION BOARD ARBIRATION PURSUANT TO THE NEW YORK DOCK CONDITIONS. I AM A UNION PACIFIC RAILROAD ("UPRR") MANAGER BY THE NAME OF JOHN E. GROTHER ("GROTHER"). THIS LETTER CONCERNS GROTHER'S MERGER TRANSACTION RELATED DEMOTION EFFECTIVE JULY 1, 1997, WHICH HAS CLASSIFIED GROTHER AS A NEW YORK DOCK "DISPLACED EMPLOYEE". THIS LETTER REPRESENTS ***OFFICIAL NOTICE*** THAT GROTHER'S DISPUTE IS TO OBTAIN "AMOUNT OF COMPENSATION REQUESTED" ON ATTCH. 2 (PG. 4), $107,370, AS THE RESULT OF SOME ACTION:

1. EITHER, A SETTLEMENT BETWEEN THE PARTIES,

2. OR, SHOULD THIS OFFICIAL NOTICE OF A DISPUTE, NOT BE SETTLED IN THIRTY (30) DAYS, THEN IMPLEMENTATION OF THE ARTICLE IV ARBITRATION PROVISION OF THE NEW YORK DOCK CONDITIONS, FINANCE DOCKET NO. 28250, APPENDIX III, REGARDING NON-AGREEMENT EMPLOYEES ADVERSELY AFFECTED BY A MERGER TRANSACTION, WILL BE ACTIVATED. AN APPEAL TO THE SURFACE TRANSPORTATION BOARD WILL BE PURSUED, IF REQUIRED.

I ATTEMPTED TO SETTLE THIS ARBITRATION DISPUTE ISSUE BASED ON UPRR'S PUBLICLY PUBLISHED STATEMENT THAT: "A DISCRIMINATION FREE WORKPLACE AND **FAIR TREATMENT ARE FUNDAMENTAL RIGHTS OF ALL ...EMPLOYEES".**

OMBUDSMAN REPRESENTATIVE MR. BUTCH ETHINGTON HAS ADVISED THAT THE UPRR "FAIR TREATMENT" CREDO WILL NOT SETTLE THIS REQUEST FOR COMPENSATION ISSUE.

THEREFORE, I HAVE INITIATED DISCUSSIONS WITH ATTORNEY MICHAEL WOLLY, OF THE WASHINGTON D.C. FIRM OF ZWERDLING, PAUL, LEIBIG, KAHN, THOMPSON AND WOLLY, P.C. THE FOLLOWING IS SUBMITTED ON INFORMATION AND BELIEF, FOR THE RESPONSE OF UPRR WITHIN THIRTY (30) DAYS; OR ON OR BEFORE **JUNE 16, 2003,** IN ACCORDANCE WITH ARTICLE IV, OF SAID NEW YORK DOCK CONDITIONS.

INTRODUCTION, UPRR PUBLICLY HERALDED POLICIES :

GROTHER IS GRATEFUL TO BE A MEMBER OF THE UPRR TEAM WHICH IS "BUILDING AMERICA" tm. GROTHER BELIEVES THAT THE LONG EXISTING POLICIES OF UPRR, AS PUBLICLY PUBLISHED IN UPRR'S "VISION & VALUES", UPRR'S REPUTATION AND COMMITMENT TO THE UNDERLYING CRITERIA OF THE BALDRIDGE AWARD, WILL PROVIDE UPRR WITH THE WORLD-CLASS OBJECTIVITY TO EXAMINE WHAT FINANCIAL AND EMOTIONAL DENIGRATION HAS BEEN DONE TO THE LIVES OF THE GROTHER'S AND SETTLE THIS ISSUE.

GROTHER IS OF THE OPINION THAT THE LOTUS NOTE TRANSMITTED TO ALL EMPLOYEES FROM PRESIDENT & COO IKE J. EVANS DATED 8/8/02 WILL PROVIDE UPRR GUIDANCE:

"FOR OVER 140 YEARS, THE MEN AND WOMEN AT UNION PACIFIC HAVE PROVEN THAT THEY CAN BE TRUSTED TO DO WHAT'S RIGHT."

THE BOTTOM PAGE ONE POLICY AND PRACTICES STATEMENT, PUBLICLY PUBLISHED IN "DIVERSITY SECTION OF THE UPRR WEBSITE" SHOULD BE GUIDANCE, AS IT'S "UPRR CREDO".

TO ILLUSTRATE, AS PUBLISHED IN THE 2002 POLICY FOR VALUES, (EXH 1): " WE PUT ALL ISSUES ON THE TABLE AND ATTEMPT TO RESOLVE THEM THROUGH CONSTRUCTIVE DEBATE AND CHALLENGE" THIS SHOULD INCLUDE THE ISSUE OF DETERMINING THE "FAIRNESS" OF TAKING 21% OF GROTHER'S MONTHLY INCOME AND RETIREMENT LOSSES BECAUSE, HE WAS SIMPLY AT TUCSON IN 1997 DURING A MERGER RELATED EXPERIMENT TO CONSOLIDATE YARDS! THE 2002 POLICY ALSO SAYS "... DO NOT KILL THE MESSENGER BEARING BAD NEWS". THIS HAS ALREADY HAPPENED TO GROTHER ONCE, WHEN GROTHER WARNED SENIOR UPRR MANAGERS IN APRIL 1997 THAT THE BELOW MERGER RELATED SWITCHING CONSOLIDATION EXPERIMENT WOULD NOT WORK.

GROTHER IS HOPEFUL THAT THE 2003 POLICY OF VALUES WILL BE HONORED AND THAT GROTHER DOES NOT RECEIVE A REPEAT DISREGARD OF THE 1997 UPRR VALUES WHICH WERE DISPLAYED PROMINENTLY ON GROTHER'S UPRR PROVIDED "VALUE'S DESKTOP STAND- 10" LONG X 4.5" HIGH" IN 1997, WHEN HE WAS SAVAGELY DEMOTED ON FOUR DAYS NOTICE TO ACCEPT OR QUIT, BECAUSE VPO SHOENER ORDERED A MERGER TRANSACTION YARD CONSOLIDATION EXPERIMENT SHORTLY AFTER SHOENER'S INITIAL ROLLOUT REVIEW OF HIS NEW UPRR TERRITORY, WHICH THEN INCLUDED ARIZONA.

GROTHER'S DEMOTION 7/1/97 WAS A DIRECT NEXUS OF THE 1997 UP-SP MERGER TRANSACTION YARD CONSOLIDATION EXPERIMENT OF COMBINING THE ENTIRE FLAT SWITCHING FOR PHOENIX INTO TUCSON BETWEEN MAY 16, 1997 & JUNE 26, 1997.

THE UPRR VALUES ON GROTHER'S 1997 DESK INCLUDED, THE FOLLOWING AND OTHER VALUES SHOWN ON EXHIBIT 2:

1. **TREAT OTHERS LIKE YOU WANT TO BE TREATED"**
(THOSE WHO CUT GROTHER'S WAGES 21% WOULD NOT HAVE WANTED THIS TO OCCUR TO THEM; INCLUDING, PRIOR TO THE MERGER-UPRR MANAGERS. NOTWITHSTANDING THE FACT THAT MANY MERGER RELATED CAR DELAYS, LAWSUITS

AGAINST UPRR, CUSTOMER SETTLEMENTS OCCURRED ACROSS THE UPRR SYSTEM IN 1997 FOR ALLEGED PERFORMANCE ISSUES RELATED TO THE MERGER; THOSE MANAGERS DID NOT HAVE THEIR WAGES REDUCED, INCLUDING THOSE TRANSFERRED.

2. **"TRY NEW IDEAS...ENCOURAGE CHANGE"**
(GROTHER WAS RUINED AFTER VPO SHOENER HAD AN IDEA, WITHOUT PROCESS SIMULATION, TO CONSOLIDATE YARDS!)

3. **"TRUST IS ESSENTIAL"**
(THE ABOVE VALUES WERE NOT HONORED IN 1997. WILL THE BUSINESS ETHICS AND FAIRNESS ISSUES BE HONORED IN 2003?)

IN ADDITION, THE PURSUIT OF THE MALCOLM BALDRIDGE NATIONAL QUALITY AWARD (WHICH IS BASED IN PART, ON A HUMAN RESOURCE FOCUS AND PROCESS MANAGEMENT), SHOULD ALLOW GROTHER'S WORLD CLASS COMPANY TO QUICKLY REACH THE DECISION THAT GROTHER SHOULD BE PROVIDED THE LOSS IN COMPENSATION AND BENEFITS WHICH STARTED JULY 1, 1997. PROCESS MANAGEMENT WAS NOT USED TO DEMOTE GROTHER IN 1997, DETERMINE THE ROOT CAUSE OF THE TUCSON SERVICE PROBLEM AFTER THE MERGER EXPERIMENT'S FAILURE. NOR, WAS THERE A REASONABLE CONCERN FOR THE HUMAN RESOURCE FOCUS IN 1997'S UPRR CORPORATE CULTURE, OR A PROPER SIMULATION OF RESOURCES BEFORE THIS MAY 1997 MERGER EXPERIMENT.

GROTHER'S EXCELLENT PERFORMANCE BACKGROUND :

GROTHER HAD BEEN A PRIOR-TO-MERGER SOUTHERN PACIFIC TRANSPORTATION COMPANY ("SPTCO") MANAGER WITH 28 YEARS OF DEDICATED AND LOYAL SERVICE WHEN HIS DEMOTION BECAME EFFECTIVE JULY 1, 1997 (EXHIBIT 7). GROTHER WAS 50.5 YEARS OF AGE AND WAS REPLACED BY A 41.5 YEAR OLD "MENTORED STUDENT" OF MR. THOMAS F. MURPHY. GROTHER'S REPLACEMENT, MR. TOM S. PARR, WAS THEN GIVEN A PAY INCREASE TO $6,328, JUST "TO ACCEPT THE

JOB" WHICH WAS BEYOND THE SALARY OF $6,200 GROTHER HAD BEEN MAKING SINCE SEPTEMBER 1995.

GROTHER'S STANDARD OF PERFORMANCE HAD NEVER BEEN BELOW "OUTSTANDING" AT ANY TIME AND GROTHER WAS NOT FORCIBLY TRANSFERRED IN 1997 TO A JOB MORE SUITABLE WITH HIS ABILITY, AS HE KNEW LITTLE ABOUT THE INTERMODAL DEPARTMENT. THE MANAGER'S AND EMPLOYEES WHO WERE AT TUCSON IN MAY-JUNE 1997 ARE WILLING TO PROVIDE CORROBORATION THAT GROTHER DID EVERYTHING WITHIN HIS AUTHORITY TO MAKE SHOENER'S YARD CONSOLIDATION MERGER EXPERIMENT WORK; BUT, YOU CAN NOT SWITCH UP TO ALMOST DOUBLE THE VOLUME OF CARS IN A YARD WITH A RESTRICTED FLAT SWITCHING CAPACITY.

THEREFORE; BUT FOR SHOENER'S INITIAL ROLLOUT MERGER YARD CONSOLIDATION EXPERIMENT, GROTHER WOULD NOT HAVE BEEN DEMOTED 7/1/97.

UPRR TOOK OVER THE SPTCO IN A ROLLOUT MANNER AND TUCSON WAS PART OF THE LAST PORTION TO CUTOVER, AS FURTHER CORROBORATED BY BLE'S EXHIBIT 8.

PRIOR TO HIS SUDDEN DEMOTION BY UPRR, GROTHER HAD BEEN SELECTED FOR MANY PROMOTIONS, HAD ELEVEN (11) "GROOMING MOVES" AT THE REQUEST OF THE SPTCO, RECEIVED SPECIAL AWARDS, SPECIAL ASSIGNMENTS, SPECIAL PROJECTS BY SPTCO MANAGEMENT FOR MANY YEARS, INCLUDING AN ASSIGNMENT BY SPTCO PRESIDENT MIKE MOHAN TO REPRESENT SPTCO AS LEAD NEGOTIATOR FOR THE PROPOSED SALE OF THE PENINSULA COMMUTE SERVICE TO THE PUBLIC ENTITIES NEAR SAN FRANCISCO (EXH. 3), WHICH WAS A $450 MILLION TRANSACTION. (EX'S. 4-6 INDICATE PARTIAL RECOGNITION, INCLUDING FACT THAT GROTHER WAS ON THE UP/SP COMMON POINT MERGER TEAM (GROTHER WAS ONE OF THE 38 PERSONS WHO WERE SELECTED).

IS IT LOGICAL THAT A MANAGER OF SUCH DEPTH AND LONGEVITY WOULD DESERVE A 21% DEMOTION, AFTER A 1.5

MONTH MERGER RELATED YARD EXPERIMENT FAILED, WHICH WAS ORDERED IN MAY 1997 BY UPRR VP SHOENER?

GROTHER WAS HIGHLY REGARDED AS A PERSON WHO COULD GET THE JOB DONE THROUGH THE CREATION OF PROCESS MANAGEMENT BASED ON HIS AIR FORCE FAIL-SAFE TRAINING, FORMAL EDUCATION (INCLUDING AN MBA,) AND IN-DEPTH PROCESS TRAINING AT SPTCO. IN FACT, GROTHER WAS SELECTED BY SPTCO VPO BILL LACY TO BE THEIR SOLE "COORDINATOR, PRODUCTIVITY IMPROVEMENT PROGRAM", INCLUDING MULTIPLE TERMINAL AND BLOCKING STRATEGY STUDIES, WITH IMPLEMENTATION TIMELINES AND DETAILED PROCESSES, WHICH WERE FOLLOWED BY THE SERVICE UNITS.

REGARDING TUCSON, GROTHER WAS SELECTED TO BE SPTCO TERMINAL SUPERINTENDENT (SENIOR MANAGER TERMINAL OPERATIONS OR SRMTO IN UPRR TERMINOLOGY) OF THE TUCSON DISTRICT FROM NOGALES-THRU TUCSON TO PIACACHO – INCLUDING ALL YARDS EFFECTIVE SEPTEMBER 16, 1995 AT A MONTHLY SALARY OF $6,200. BASED ON GROTHER'S STRONG PERSONAL RECORD AND EXCELLENT PERFORMANCE, GROTHER WAS SELECTED AS UPRR'S CHOICE TO BE SRMTO APRIL 16, 1997. GROTHER'S SELECTION WAS SO STRONG THAT UPRR DID NOT REQUIRE THE PERSONNEL REVIEW SELECTION PROCESS CONDUCTED BY UPRR TO DETERMINE WHO WOULD KEEP THEIR EX-SPTCO POSITIONS WHICH WERE CONDUCTED IN JANUARY 1997 (EXH. 9). THEREFORE, ONLY TWO MONTHS BEFORE GROTHER'S SEVERE DEMOTION, GROTHER WAS SELECTED BY UPRR TO BE ITS SENIOR OFFICER FOR THE TUCSON DISTRICT, INCLUDING TUCSON AND NOGALES YARDS.

CORROBORATION OF NEXUS BETWEEN VPO SHOENER'S DECISION TO CONSOLIDATE SWITCHING AND DEMOTION :

NOTWITHSTANDING THAT THE UP-SPTCO MERGER WAS EFFECTIVE SEPTEMBER 11, 1996, THE IMPLEMENTATION WAS ROLLED OUT IN TERMINAL CONTROL SYSTEM (TCS) REGIONS. TUCSON WAS IN THE LAST REGION TO BE CUTOVER TO TCS

(EXH. 8). THE FIRST TCS CUTOVER WAS NOT COMPLETED UNTIL MAY 2, 1997 (1.5 MONTHS BEFORE DECISION MADE TO DEMOTE GROTHER) REGARDING THE FORMER D&RGW PORTION OF THE SPTCO. CLEARLY, THE MERGER IMPLEMENTATION WAS SLOW AND PAINFUL! AS PART OF THE INITIAL MERGER IMPLEMENTATION ROLL-OUT, UPRR VPO ARTHUR SHOENER PERFORMED HIS AN INITIAL IN-DEPTH REVIEW OF UPRR ARIZONA OPERATIONS IN EARLY 1997 TO DETERMINE WHAT WAS "DESIRABLE TO REALIZE MERGER BENEFITS". VPO SHOENER REACHED THE MERGER TRANSACTION RELATED DECISION TO CLOSE THE PHOENIX FLAT SWITCHING OPERATION AND MOVE "ALL FLAT SWITCHING" TO TUCSON, DESPITE THE 1% GRADE AND LACK OF OTHER RESOURCES, INCLUDING TRACK CAPACITY FOR THAT VOLUME AND TWO ON-GOING MAINTENANCE OF WAY (M OF W) CURFEW'S STOPPING TUCSON OPERATIONS, IN EACH DIRECTION FROM 0700-1900 MONDAY THOROUGH FRIDAY. GROTHER'S ATTORNEY CONFIDENTIAL JOURNAL INDICATES THAT BOTH M OF W CURFEWS STARTED TUESDAY, MAY 6, 1997, AFTER GETTING THE M OF W EQUIPMENT ORGANIZED ON MONDAY, MAY 5, 1997.

ONE **CORROBORATION OF THE NEXUS TO THE UP-SP MERGER TRANSACTION** IS SHOENER'S DIRECT ORDER (BASED ON HIS MERGER TRANSACTION TRIP TO REVIEW EX-SPTCO TERRITORY) TO SEVERAL UPRR MANAGERS; INCLUDING, BUT NOT LIMITED TO DTO H. LAWSON MCDOWELL AND SERVICE UNIT SUPERINTENDENT KEN C. PACKARD) THAT ALL PHOENIX FLAT SWITCHING WOULD BE CONSOLIDATED AT TUCSON.

THE OMAHA WORLD-HERALD STATED AUGUST 19, 2000 THAT:

"U.P. CORPORATION WILL ELIMINATE ANOTHER 1,600 JOBS IN THE NEXT 16 MONTHS AS IT **MOPS UP THE LAST DETAILS OF ITS 1996 MERGER WITH THE S.P." "DURING THE FIVE YEAR MERGER TRANSITION PERIOD, WHICH CONTINUES FOR ANOTHER YEAR, U.P. HAS *CONSOLIDATED OR DISPERSED OF REDUNDANT TRAIN FACILITIES AND ABANDONED RAILINES".***

THE ABOVE ARTICLE WAS WRITTEN IN AUGUST 2000 OVER THREE (3) YEARS SINCE THE MERGER TRANSACTION YARD ***CONSOLIDATION EXPERIMENT WAS ORDERED BY UPRR VP SHOENER DISPERSING ALL PHOENIX FLAT SWITCHING TO TUCSON FROM PHOENIX.*** SINCE UPRR WAS STILL MOPPING UP THE DETAILS OF THE MERGER EXPERIMENTS IN 2000, THE **NEXUS IS CLEAR,** THAT A MAY 1997 YARD CONSOLIDATION SWITCHING EXPERIMENT THAT WAS ORDERED AS PART OF THE MERGER IMPLEMENTATION "SAVINGS PROCESS", ACROSS THE NEWLY MERGED UPRR SYSTEM, COULD NOT BE DEFINED AS ANYTHING OTHER THAN A MERGER TRANSACTION NEXUS.

PROGRESSIVE RAILROADING ARTICLE JANUARY 2003 UNDERSCORES THE CORROBORATION OR **NEXUS** AS IT PORTRAYS THE LENGTH OF DELAY RELATED TO THE UPRR ROLL-OUT STRATEGY:

"ALTHOUGH IT TOOK UNION PACIFIC **SEVERAL YEARS** TO GET ITS POST-MERGER ACT TOGETHER-BY IMPROVING SERVICE,... CUTTING COSTS-MANAGEMENT IS COUNTING ON THE REVAMPED FRANCHISE **(THE DIRECT RESULT OF MERGER TRANSACTION EXPERIMENTS INCLUDING YARD CONSOLIDATION EXPERIMENTS)**...TO ACT AS TOP-LINE SPRINGBOARDS" (PARENTHESIS INSERT ADDED) (SEE EXH. 50).

AS IN MOST MERGERS, UPRR MANAGERS WERE NOT INTERESTED IN THE OPINIONS OF EX-SPTCO MANAGERS. GROTHER DID PROVIDE A DOCUMENTED LIST OF THE RESOURCES AND BLOCKING THAT WOULD BE REQUIRED **BEFORE ATTEMPTING TO CONSOLIDATE.** THAT LIST WAS IGNORED BY THE 1997 UPRR CORPORATE CULTURE, WHICH REQUIRED THE MERGER TRANSACTION EXPERIMENT TAKE PLACE PROMPTLY AS ORDERED BY THE HASTY VPO DECISION.

ACCORDING TO WITNESSES AND DOCUMENTATION, GROTHER EXPRESSED CONCERN REGARDING THE FACT TUCSON WAS SURROUNDED ON BOTH SIDES BY MAINTENANCE-OF-WAY (M OF W) CURFEWS WHICH PROHIBITED THE OPERATION OF

TRAINS, IN ANY DIRECTION, BETWEEN THE HOURS OF 0700-1900 M-F. IN FOOTBALL PARLANCE, THE TRAMPLED PLAYING FIELD WAS CUT IN HALF (BY THE LACK OF OPERATIONAL TIME ACCOUNT CURFEW AND THE OTHER TEAMS SIZE WAS DOUBLED (BY CONSOLIDATING PHOENIX FLAT CAR SWITCHING INTO TUCSON), WHICH WAS A SURE RECIPE FOR DISASTER, WHICH WAS NOT GROTHER'S DECISION OR CONTROL!

UNDER PRESENT UPRR OPERATIONS, UPRR TAKES GREAT CARE WITH M OF W CURFEWS AND EVEN DETOURS TRAINS AND OTHER ACTIVITIES TO ENSURE THAT THE TERMINAL WILL SURVIVE. GROTHER OVERHEARD MANY CONFERENCE CALL STATEMENTS BY REGIONAL VP STEVE BARKLEY REGARDING THE CURFEWS ON EITHER SIDE OF SAN ANTONIO TO DENNIS THOLEN AND OTHERS CONCLUDING JULY 21, 2000 THAT "WE CAN NOT LET HIM (GARY DAVIDSON) FAIL FROM THESE CURFEWS". TRAINS WERE DETOURED AND OTHER SEVERE MEASURES WERE TAKEN TO SAVE GARY DAVIDSON (A PRIOR TO THE UP-SPTCO MERGER MANAGER OF UPRR). ANYONE WHO WAS IN ATTENDANCE ON BARKLEY'S JULY 2000 CONFERENCES COULD CORROBORATE THE FACT THAT M OF W CURFEW'S WILL ADVERSELY AFFECT A TERMINAL'S PERFORMANCE AND THAT IS NOT THE TIME FOR MERGER RELATED YARD CONSOLIDATION EXPERIMENTATION. UNFORTUNATELY, THAT WAS JUST THE CASE IN 1997, AS ALL WERE "PILING ON THE BELEAGUERED EX-SPTCO MANAGEMENT AT TUCSON", TO EXTEND THE METAPHOR OF THE "TRAMPLED PLAYING FIELD".

THE MERGER TRANSACTION EXPERIMENT WAS STARTED EFFECTIVE MAY 14, 1997 WHICH WAS ABOUT TWENTY (20) MONTHS AFTER GROTHER HAD PERFORMED EXCELLENTLY AS THE INCUMBENT ON GROTHER'S TUCSON TERRITORY ASSIGNMENT. SENIOR UPRR MANAGEMENT QUICKLY REALIZED THAT THE TWO (2) M OF W CURFEWS, LACK OF CAPACITY, LACK OF PERSONNEL, 1% GRADE ISSUE, TRACK CONDITIONS, AND OTHER TUCSON RESOURCE DEFICIENCIES HAD CREATED A FAILURE, JUST AS GROTHER PREDICTED. IN DESPERATION, CAPACITY STUDY, PROCESS AND "BULLYING SWITCHING

EXPERTS" WERE FLOWN IN TO SHOW THE EX-SPTCO MANAGERS "HOW TO RAILROAD". THEY WERE QUICKLY BROUGHT TO REALITY AND HAD TO PUBLICLY ADMIT THAT IT COULD NOT BE DONE. DURING THE WEEK OF JUNE 16, 1997, CONFIDENTIAL MEETINGS WERE HELD TO DETERMINE WHO WOULD BE THE SCAPEGOAT AND A LITTLE OVER ONE-MONTH INTO THE MERGER TRANSACTION EXPERIMENT, THE GROTHER DEMOTION AND 21% PAY CUT DECISION WAS MADE BEHIND DOORS, IN TUCSON, BY SENIOR UPRR MANAGEMENT.

THE DECISION TO DEMOTE GROTHER WAS MADE WITH COMPLETE DISREGARD FOR THE FACTS. SHOENER WAS THE GENESIS OF THIS MERGER TRANSACTION DECISION, AS TESTIFIED TO BY MANY WITNESSES. THEREFORE, WHY PUNISH THE LOCAL MANAGER, WHO JUST HAPPENED TO BE THERE?

AS INDICATED BY THE WEB SITE OF THE BLE UNION, EXH. 8, THE CONTINUING UPRR ROLLOUT PROBLEMS AT TUCSON CONTINUED FOR SEVERAL MONTHS AFTER THE DEMOTION OF GROTHER, WHICH DOES NOT MATCH STATEMENTS MADE IN PRESIDENT JERRY DAVIS'S RESPONSE TO GROTHER'S APPEAL (EXH. 10), CONCERNING GROTHER'S SEVERE DEMOTION.

PRESIDENT DAVIS STATED ON SEPTEMBER 4, 1997 IN PART:

"IN JUNE THE SERVICE LEVELS TO OUR CUSTOMERS, BOTH EXTERNAL AND INTERNAL, DETERIORATED TO THE POINT IMMEDIATE ACTION HAD TO BE TAKEN. WE BELIEVE THAT A CHANGE IN MANAGEMENT WAS NECESSARY FOR IMPROVEMENT TO OCCUR." (EXH.11).

IN FACT, THE DIFFICULTIES AT TUCSON WERE STILL OCCURRING IN SEPTEMBER, 1997, WHEN UPRR PRESIDENT DAVIS FINALLY RESPONDED TO GROTHER (EXH. 8). THE ONLY THINGS, WHICH KEPT, TUCSON TERMINAL BARELY FLUID IN SEPTEMBER 1997 WERE THAT:

1) THE M OF W CURFEWS ON BOTH SIDES HAD ENDED, AND

2) THE "JUNE SERVICE LEVEL PROBLEM" AT TUCSON WAS THE MERGER TRANSACTION YARD CONSOLIDATION EXPERIMENT HAD BEEN SUDDENLY ENDED JUNE 26, 1997, JUST AFTER GROTHER WAS ORDERED TO TAKE A 21% PAY CUT TO HOUSTON INTERMODAL, OR HIT THE STREET!

UPRR PRESIDENT DAVIS DID NOT STATE THAT MY DEMOTION WAS FOR "PERSONAL PERFORMANCE ISSUES OR ANY TYPE OF DISCIPLINARY REASON". DAVIS STATED IT WAS SIMPLY RELATED TO THE "JUNE SERVICE FAILURE", WHICH WAS THE DIRECT RESULT OF NEARLY DOUBLING THE VOLUME, WITH NO INCREASE IN RESOURCES AND A 12 HOUR PER DAY M OF W CURFEW ON BOTH SIDES OF TUCSON. (DOCUMENTATION OF ABOVE AVAILABLE TO PRESENT)

PRESIDENT DAVIS HAD SO LITTLE REGARD FOR THE DISPLACED DEMOTION OF GROTHER THAT DAVIS:

- TOOK ALMOST TWO MONTHS TO RESPOND,

- DID NOT USE THE QUALITY PROCESS TO DETERMINE THE ROOT CAUSE OF THE JUNE 1997 SERVICE FAILURE,

- DID NOT EVEN BOTHER TO ADDRESS GROTHER'S SPECIFIC INQUIRY ABOUT GROTHER'S FINANCIAL REQUEST TO AVOID FINANCIAL AND EMOTIONAL DENIGRATION FOR LIFE, AND

- DID NOT HAVE ANYONE INVESTIGATE GROTHER'S STATEMENT REGARDING "HOW...**THE ISSUES OF DISCRIMINATION RELATE TO MY SUDDEN DOWNGRADE"**

PRESIDENT DAVIS'S LETTER IS STRONG ***CORROBORATION*** THAT THE **NEXUS** OF GROTHER'S DEMOTION WAS THE JUNE SERVICE FAILURE, WHICH HAS A DIRECT NEXUS TO THE LATE MAY MERGER RELATED DECISION BY VPO SHOENER TO CONSOLIDATE TERMINALS WITHOUT DOING A CAPACITY

STUDY IN ADVANCE OR GOING THROUGH A PROPER SIMULATION STUDY OF ISSUES PRIOR TO THE ATTEMPTED YARD CONSOLIDATION IMPLEMENTATION, INCLUDING THE POSTPONEMENT OF THE TWO (2) STRANGLING M OF W CURFEWS.

FURTHERMORE, THE RECORDS DO NOT INDICATE THAT THERE HAD EVER BEEN AN ATTEMPT TO CONSOLIDATE ALL FLAT SWITCHING FROM PHOENIX TO TUCSON BEFORE THE 1997 UP-SP MERGER TRANSACTION NEXUS; NOR, HAS THERE BEEN ONE SINCE OF ANYTHING NEAR THE SAME VOLUME MAGNITUDE. THE LATE MAY, 1997 SWITCHING CONSOLIDATION EXPERIMENT HAD A DIRECT NEXUS OR TIMING WITH THE MERGER ROLLOUT RELATED TO THE UPRR SYSTEM IMPLEMENTATION, WHEN MANAGERS INEXPERIENCED WITH THE TERRITORY SOUGHT A QUICK "MERGER RETURN", AND WOULD NOT LISTEN.

GROTHER HAD ACCESS TO THE 1997 UPRR CAPACITY STUDY WHICH DOCUMENTED, THAT CONSOLIDATION OF THAT VOLUME COULD NOT BE DONE; ESPECIALLY, WITH PHOENIX ALSO SENDING ALL MILL-RUN WESTBOUND TRAFFIC TO TUCSON AND WEST COLTON WAS ALSO BLOCKING THE LAPXM'S SO POORLY THAT THEY HAD TO BE OPERATED INTO TUCSON BECAUSE THEY HAD TO BE PROPERLY RE-BLOCKED (EXH. 12 IS CORROBORATION).

THIS MERGER RELATED YARD CONSOLIDATION EXPERIMENT WAS AN IMPOSSIBLE TASK. MANY PRIOR-TO-MERGER UPRR MANAGERS WERE ALSO IN AGREEMENT, BEFORE THE MERGER CONSOLIDATION EXPERIMENT, THAT FAILURE WAS THE ONLY POSSIBLE OUTCOME, AS SWITCHING CAPACITY WAS LACKING.

CONDITIONS IN 1997 WHICH CORROBORATE THE MERGER TRANSACTION NEXUS FOR GROTHER DEMOTION :

AS ***CORROBORATION*** OF THE 1997 UPRR CORPORATE CULTURE, WHICH SEVERELY DEMOTED GROTHER, THE WALL STREET JOURNAL ON AUGUST 25, 1999 INDICATED, IN PART (EXH 13):

1. "WHEN SOMETHING HAPPENED, " **YOU PULLED OUT YOUR GUN AND SHOT THE GUY IN CHARGE OF THE TERRITORY**" (ABOVE PROVES NEXUS TO GROTHER'S DEMOTION. AFTER THE UPRR MERGER WAS APPROVED, ROLLOUT FIELD VISITS WERE TAKEN AND THE MERGER TRANSACTION EXPERIMENT OF CONSOLIDATING THE PHOENIX AND TUCSON FLAT SWITCHING TERMINALS WAS ORDERED THEREAFTER BY VPO SHOENER).

2. "THEIR CULTURE WAS DYSFUNCTIONAL AND CHARACTERIZED BY NONCOMMUNICATION"

3. "TROUBLED ... 1997-98 ..." "FREIGHT SERVICE HAD COLLAPSED, STRANDING MIDWESTERN CROPS, SNARLING WEST COAST PORTS AND DELAYING SHIPMENTS OF GOODS FROM CHEMICALS TO PAPER"
(THE WHOLE UPRR SYSTEM WAS FOULED).

4. "BUT MANY PEOPLE BLAME UNION PACIFIC MANAGEMENT. THEY SAY UNION PACIFIC **TRIED TO CUT COSTS DURING THE INTEGRATION, NOT HIRING PEOPLE AND CRAMMING CARS INTO FEWER YARDS"**
(ABOVE IS EXACTLY WHAT HAPPENED AT TUCSON DURING THE MERGER TRANSACTION YARD ***CONSOLIDATION EXPERIMENT OF MOVING PHOENIX SWITCHING INTO TUCSON, WITHOUT BENEFIT OF CAPACITY, PROCESS, PROPER RESOURCE STUDY!***

5. "MEANWHILE, MR. DAVIDSON REINFORCES HIS PUSH FOR GREATER FLEXIBILITY BY SHOWING **HE IS WILLING TO TRY ANYTHING".**
(ABOVE IS GREAT; BUT, WHY RUIN THE GROTHER'S LIVES?)

WHEN A MERGER RELATED TRANSACTION SWITCHING EXPERIMENT WAS ATTEMPTED WITHOUT BENEFIT OF: AN ADVANCE CAPACITY STUDY, INSUFFICIENT SIMULATION OF VOLUME IMPACT, NO PROPER IN-DEPTH DISCUSSIONS WITH LOCAL MANAGEMENT, NO POSTPONEMENT OF M OF W CURFEWS ON BOTH SIDES OF TUCSON YARD, LACK OF RESPECT

FOR THE DIFFICULTIES OF FLAT SWITCHING ON TUCSON'S ONE PERCENT (1%) GRADE AND NO ATTEMPT TO PROVIDE THE RESOURCES REQUESTED TO MAKE THE GOAL WORK; ANY YARD CONSOLIDATION EXPERIMENT WOULD FAIL.

IN MUCH THE SAME WAY AS ENRON'S VICE PRESIDENT OF CORPORATE DEVELOPMENT, MS. SHERRON WATKINS, BELIEVED SHE HAD A DUTY TO ADVISE SENIOR MANAGEMENT OF AN IMPENDING FAILURE, GROTHER ADVISED THAT THIS MERGER TRANSACTION EXPERIMENT WAS DOOMED. NOT ONLY WERE HIS WARNINGS IGNORED; BUT, WHEN THE EXPERIMENT FAILED, GROTHER WAS VICARIOUSLY DISPLACED AND ADVISED TO ACCEPT A 21% IN SALARY AT HOUSTON TEXAS, IN A DIFFERENT DEPARTMENT, OR "HIT THE STREET"!

AFTER 28 YEARS OF DEDICATED SERVICE, MAINLY AS AN OPERATING DEPARTMENT MANAGER WORKING 12+ HOUR DAYS/NIGHTS/WEEKENDS/HOLIDAYS/DERAILMENTS/INJURIES/ HAZARDOUS MATERIAL RELEASES/INCIDENTS AND SO FORTH, GROTHER FEELS 'THE 33,000 MILES OF BUILDING AMERICA"tm.

NONETHELESS, GROTHER AS AN EX-SPTCO MANAGER, WAS "OUTSIDE THE UPRR OLD BOY NETWORK" OF LONG-TERM ALLEGIANCES. IN ADDITION, BASED ON THE 1997 UPPR CORPORATE CULTURE AND THE MERGER TRANSACTION SWITCHING CONSOLIDATION FAILURE, SENIOR UPRR MANAGERS UNDERTOOK AN AGGRESSIVE PROGRAM OF REMOVING, DEMOTING, DENIGRATING (UNTIL RESIGNED) EX-SPTCO MANAGERS UNTIL ***ALL SPTCO MANAGERS WHO WERE AT TUCSON WHEN THE MERGER WAS ANNOUNCED ARE GONE!***

MSSERS. JOHN E. GROTHER, DAVID L. HAMPTON, PAUL A. LOBELLO, RAY SZAREK AND ROBERT STREFELDER WERE EITHER "ASKED TO" OR DID RESIGN AS MANAGERS AND EX-ROCK ISLAND SERVICE UNIT MGR. KEN C. PACKARD WAS LATER DEMOTED; BUT, ***WITH NO REDUCTION IN WAGES!*** EX-SPTCO MANAGER DAN S. PAYAWALL TRAGICALLY DIED DURING THE STRESS-FILLED TWELVE (12) HOUR PLUS DAYS OF

THE CONSOLIDATION TRANSACTION EXPERIMENT, WHEN HIS PANCREATIC CANCER CAME OUT OF REMISSION, "AFTER DAILY STRESSFUL CONFRONTATIONS WITH THE UPRR SWITCHING EXPERTS", AND DIED DURING SAID YARD EXPERIMENT.

GROTHER KNOWS WHAT HE WAS TOLD BY MASSEURS. KEN C. PACKARD AND THOMAS F. MURPHY ON JUNE 26, 1997 AS THE REASON FOR GROTHER BEING DEMOTED, WAGES CUT, ETC:

"**WE WANT OUR OWN PEOPLE IN TUCSON**", (PACKARD)

"**UNION PACIFIC WANTS ITS OWN MANAGERS ON THE SUNSET ROUTE**" (MURPHY)

THE ABOVE UPRR MANAGERS DID NOT SAY ONE WORD ABOUT POOR PERSONAL PERFORMANCE IN 1997; NOR, IS THERE ANY DOCUMENTATION KNOWN TO GROTHER, THAT INDICATES A "POOR PERSONAL PERFORMANCE ISSUE". GROTHER WAS NEVER PROVIDED AN ORAL OR WRITTEN WARNING OF PERSONAL PERFORMANCE ISSUES OR PLACED ON A PERSONAL DEVELOPMENT PROGRAM. GROTHER WAS NEVER ASKED TO SIGN ANY DOCUMENT, WHICH STATED THAT GROTHER'S PERFORMANCE WAS THE REASON FOR THE 1997 DEMOTION.

THE POOR PERFORMANCE STATEMENTS HEREIN; REGARDING GROTHER ARE "DEFAMATION", WHICH CAN BE PROVEN TO BE 100% FALSE. IT IS A PRETEXT (A COVER UP), IN PART, FOR PREJUDICE AGAINST FORMER MANAGERS OF SPTCO.

PARTIAL LIST OF REASONS FOR THE DELAY IN THE PRESENTATION OF THIS DISPUTE (INCLUDES THREATS OF RETALIATION, ACTIONS BY UPRR WHICH CREATED A PATTERN OF MISTRUST AND FEAR OF UPRR PUBLIC STATEMENTS, WHICH ALLEGE ONE TYPE OF CORPORATE BEHAVIOR AND ANOTHER TYPE OF BEHAVIOR OCCURS, WHICH WOULD FURTHER INTIMIDATE ANY EMPLOYEE INTO A FEAR TO TAKE ARBITRATION ACTION

1. THE UPRR CORPORATE CULTURE IN 1997 WAS DYSFUNCTIONAL, ABUSIVE AND "GUNSLINGER" PER MR. R.F. DAVIDSON" ACCORDING TO EXHIBIT 13 FROM THE WALL STREET JOURNAL (WSJ) ARTICLE REFERRING TO 1997-98. THEREFORE, GROTHER SURELY WOULD HAVE BEEN IMMEDIATELY DISMISSED HAD GROTHER DARED TO TRANSMIT ANOTHER, STRONGER APPEAL THAN GROTHER'S JULY 15, 1997 LETTER TO UPRR PRESIDENT DAVIS (EXH. 10), OR ATTEMPT ANY TYPE LEGAL ACTION. AS ANYONE EVEN "NEAR WHERE SOMETHING HAPPENED", WAS ELIMINATED.

MR. R.F. DAVIDSON IS QUOTED IN EXHIBIT 13:

"SOMETIMES YOU MAKE THE DECISION AND THEN ANALYZE THE PROBLEM"

(ABOVE AND BELOW ARE HOW GROTHER WAS DEMOTED & FINANCIALLY/EMOTIONALLY DENIGRATED FOR LIFE!)

UPRR VP JOHN REBENSDORF IS QUOTED (EXH. 13) BY WSJ DESCRIBING 1997-98 AS THE DAYS OF LEADING BY FEAR:

" WHEN SOMETHING HAPPENED, YOU PULLED OUT YOUR GUN AND SHOT THE GUY IN CHARGE OF THE TERRITORY"

BUT FOR UPRR'S ABOVE 1997 CORPORATE CULTURE BEING THE CREDO USED TO JUDGE THE FAILED MERGER YARD CONSOLIDATION EXPERIMENT OF PLACING ALL PHOENIX SWITCHING INTO TUCSON, GROTHER WOULD NOT HAVE BECOME A DISPLACED EMPLOYEE.

WHEN VPO SHOENER'S MERGER TRANSACTION YARD CONSOLIDATION EXPERIMENT FAILED BETWEEN LATE MAY AND JUNE 1997, GROTHER WAS TRANSFERRED AND DEMOTED (DISPLACED) JULY 1, 1997 AND FINANCIALLY DENIGRATED FOR LIFE.

2. IN THE SEPTEMBER 1997 RESPONSE TO GROTHER'S APPEAL,

PRESIDENT DAVIS DISPLAYED SUCH A TOTAL LACK OF REGARD FOR THE ISSUES OF FAIRNESS, DISCRIMINATION, PROCESS MANAGEMENT TO DETERMINE THE ROOT CAUSE OF THE TUCSON 1997 JUNE SERVICE FAILURE AND THE FINANCIAL DENIGRATION OF GROTHER, THAT ANY FURTHER APPEAL TO FAIRNESS IN 1997 WAS TOO HIGH OF AN "INDIVIDUAL RISK".

3. IN 1997, THE UPRR VISION AND VALUES DESKTOP PLACARD WAS DISPLAYED PROMINENTLY ON GROTHER'S DESK STATING ALLEGED PROPER BEHAVIOR FOR UPRR (EXH. 2): (BELOW ARE FEW 1997 UPRR PUBLICLY PUBLISHED VALUES)

   " TREAT OTHERS LIKE YOU WANT TO BE TREATED",

   " TRY NEW IDEAS...ENCOURAGE CHANGE"

   " TRUST IS ESSENTIAL"

   IN THE MEANTIME, GROTHER WAS BEING DEMOTED 21%, OR $1,272 / MONTH AND BEING TRANSFERRED & DENIGRATED. SHOENER HAD THE ABOVE "NEW IDEA" AND GROTHER WAS FINANCIALLY AND EMOTIONALLY DENIGRATED FOR LIFE

THE DIFFERENCE BETWEEN UPRR REALITY AND WHAT UPRR PUBLICLY STATED AS ITS 1997 VISIONS AND VALUES IS A STARK AND DEVASTATING CONTRAST; ESPECIALLY, FOR EX-SPTCO MANAGERS! TO ILLUSTRATE FURTHER THE UNDERLYING "TRUST DISCONNECTS IN 1997 AND THEREAFTER", SEE MOST OF THE PARAGRAPHS BELOW.

4. IN APRIL-MAY 1997 WHEN GROTHER, IN WRITING, ADVISED SENIOR MANAGEMENT THAT THE MERGER CONSOLIDATION EXPERIMENT FAILURE WAS CERTAIN, BASED ON THE LACK OF RESOURCES AT TUCSON, GROTHER WAS IGNORED AND THEN PUNISHED WITH A TWO SALARY RATE GRADE DEMOTION IN 2 MONTHS, FOR JUST BEING THERE. GOES TO PATTERN OF MISTRUST AND FEAR OF UPRR RETALIATION.

5. GROTHER HAS ORALLY AND IN WRITING REQUESTED PERFORMANCE DEVELOPMENT REVIEWS (PDR'S) FROM SUPERVISORS DATING BACK TO 1997. AT THIS WRITING, ONLY YEAR 2000 HAS BEEN RECEIVED (SEE EX'S 13A-C). GROTHER ADVISED IN APRIL 2003 THAT 2001 PDR HAS BEEN "LOST".

MORE IMPORTANTLY, GROTHER NEVER RECEIVED ANY ORAL OR WRITTEN WARNING (PROGRESSIVE OR OTHERWISE) OF PERSONAL POOR PERFORMANCE AT TUCSON IN 1997. THERE WAS NO UPRR DEVELOPMENT ACTION PLAN. NO DISCUSSIONS OF POOR PERFORMANCE. GROTHER WAS NEVER ASKED TO SIGN ANY DOCUMENT, WHICH STATED THAT GROTHER HAD BEEN A POOR PERFORMER. NO PROGRESSIVE DISCIPLINE.

THERE WAS ONLY A FOUR (4) WORKDAY NOTICE TO TAKE THE $1,272 CUT IN WAGES IN HOUSTON OR "HIT THE STREET" ON JUNE 26, 1997.

6. UPRR DEMOTION POLICY IN 1997 STATED THAT:

> **"IN *MOST CASES*, THE EMPLOYEE'S PRESENT SALARY LEVEL IS RETAINED" (SEE EXH. 14).**
>
> IN CONTRAST TO THE ABOVE PUBLISHED POLICY, GROTHER'S SALARY WAS DRASTICALLY REDUCED; WHICH CORROBORATES THAT HE EXPERIENCED PREJUDICE AS AN EX-SPTCO MANAGER, FOR A MERGER EXPERIMENT FAILURE.

7. NEW HOUSTON SUPERVISOR, MR. DON F. FRYAR, STATED ON SATURDAY, AUGUST 2, 1997; IN PART:

> " YOU CAN NOT WORK AROUND HERE DURING ANY TYPE OF LAWSUIT, AS THEY (UPRR) WOULD MAKE LIFE UNBEARABLE FOR YOU" (NO WITNESSES OF COURSE; BUT, INTIMIDATING, HARASSING AND A THREAT OF SEVERE RETALIATION.)

FRYAR RETIRED FEBRUARY 1, 2003; THEREFORE FRYAR'S ORDERS TO NOT PUSH BACK AGAINST UNFAIR TREATMENT, HOPEFULLY; NO LONGER HAVE ANY STANDING.

THIS WAS GROTHER'S SECOND WARNING OF IMMEDIATE RETALIATION, SHOULD GROTHER COMPLAIN OR SEEK ARBITRATION. MR. KEN C. PACKARD (PRIOR BOSS), HAD ADVISED GROTHER ON JUNE 26, 1997 (DAY OF DEMOTION NOTIFICATION) THAT:

"YOU KNOW, THEY CAN FURTHER DEMOTE YOU. YOU ARE NOT GETTING ANY YOUNGER". "YOU BETTER TAKE DEMOTION AND BE HAPPY"

8. GROTHER FOUND OUT ONLY AFTER THEY TOOK BUYOUTS OR RETIRED, THAT THE FOLLOWING TWO EX-SPTCO MANAGERS HAD BEEN DEMOTED FROM THE OPERATING DEPARTMENT (WHERE THEY MANAGED TRAIN OPERATIONS LIKE GROTHER), WERE TRANSFERRED TO INTERMODAL ON THE SAME JOB AND IN THE SAME PLACE AS GROTHER JUST BEFORE GROTHER AND YET THEIR WAGES WERE NOT REDUCED, OR THEIR SUBSEQUENT PENSIONS AFFECTED:

MASSEURS HARRY L. STARK AND JOE D. CROW

GROTHER HAD BEEN TREATED DIFFERENTLY AS THE ABOVE SIMILARLY SITUATED PERSONS AT UPRR IN 1997. ONE REASON FOR BEING TREATED DIFFERENTLY WAS THAT THOSE UPRR MANAGERS IN DIRECT CHARGE OF THE 1997 TUCSON DEMOTION DECISION OF GROTHER, MASSEURS KEN C. PACKARD AND THOMAS F. MURPHY MADE IT CLEAR (SEE MIDDLE OF PAGE 15 ABOVE), THAT EX-SPTCO MANAGERS WERE NOT WELCOME IN THE MERGED UP-SPTCO COMPANY.

IN ADDITION, PRIOR TO THE MERGER MANAGERS OF UPRR WERE ALSO TREATED CONSIDERABLY DIFFERENT REGARDING THE EXTREMELY ADVERSE SERVICE FAILURES IN 1997. SHOWN

59

ON EXHIBIT 15 ARE THOSE PRIOR-TO-THE- MERGER UPRR MANAGERS WHO MADE THE LOCAL HOUSTON NEWSPAPER BECAUSE OF SPECTACULAR SERVICE FAILURES (I.E. MASSEURS CHARLES MALONE, AND GREG "BUBBA" GARRISON).

THESE TWO SAMPLES OF PRIOR TO THE MERGER MANAGERS OF UPRR SUFFERED NO PERSONAL REDUCTION IN PAY DESPITE THOUSANDS OF DELAYED CARS, HUGE LAWSUITS AND LARGE CUSTOMER SETTLEMENTS AGAINST UPRR ACCORDING TO THE HOUSTON NEWSPAPERS (EXH. 16). SURELY, THEY WERE ALSO PERCEIVED TO HAVE "PERFORMANCE PROBLEMS" OR PERFORMANCE WHICH WAS THAT WHICH WAS NOT WANTED; YET, THEIR WAGES AND PENSION WERE NOT DENIGRATED FOR LIFE-**WHY NOT? IN COMPARISON, GROTHER'S 1997 PERFORMANCE RESULTED IN NO LAWSUITS, CUSTOMER SETTLEMENTS OR STB THREATS TO TAKE TRACKAGE!**

THE SYSTEM-WIDE UP-SP MERGER CUSTOMER DELAY AND SERVICE FAILURE ISSUES ARE WELL DOCUMENTED (EX'S 17-22).

9. TO FURTHER ILLUSTRATE PACKARD AND MURPHY'S POSSIBLE PREJUDICE AGAINST EX-SPTCO MANAGERS, GROTHER JUST FOUND OUT **JULY 31, 2002,** FOR THE FIRST TIME AFTER CONSIDERABLE INQUIRIES AND EFFORT, THAT "SOMEONE" HAD PLACED ON THE SECRET-TO-GROTHER ONLINE PERSONAL RECORD SYSTEM THAT GROTHER HAD BEEN DEMOTED ON JULY 1, 1997 FOR "DISCIPLINARY REASONS" (SEE EXHIBIT 23).

   EXHIBITS 23, 24 AND 26 PROVIDE PART OF THE CORROBORATE FOR DELAY THAT GROTHER INCURRED OR THE NEED TO KEEP REQUESTING INFORMATION OVER SEVERAL MONTHS AND FROM SEVERAL PEOPLE, JUST TO OBTAIN THE NEW, "BACK-STABBED INSIGHT" INTO THE SECRET UPRR ONLINE SYSTEM, WHICH ALSO FURTHER CORROBORATES WHY GROTHER HAS DEVELOPED A REALISTIC FEAR OF TRUSTING SOME IN UPRR MANAGEMENT.

AT FIRST, GROTHER ATTEMPTED WORKING WITH THE LOCAL HR PERSON, LINDA BUTTRILL TO OBTAIN INFORMATION ON THE 1997 DEMOTION POLICY OF UPRR AND WHY GROTHER WAS NON-PROMOTABLE, INCLUDING OBTAINING GROTHER'S PERSONAL RECORD. ALL THESE REQUESTS ENDED IN DEADENDS, UNLESS OTHERS WERE INVOLVED AT A LATER DATE TO PROVIDE THE "REAL INFORMATION AND ANSWERS"

10. TO FURTHER CORROBORATE GROTHER'S CONCERN ABOUT THE "DISINGENUOUS ISSUE OR FEAR OF SOME IN THE UPRR SYSTEM". THE CONSTANT DEADENDS AND PATTERNS OF MISINFORMATION ARE WHY NO ONE IN THEIR RIGHT MIND WOULD REQUEST AN ARBITRATION CASE EARLIER THAN 55:

A. ON JANUARY 3, 2003 THE UPRR OMBUDSMEN, MR. BUTCH ETHINGTON ORALLY ADVISED GROTHER THAT:

"I CAN NOT GET ANYONE TO COME FORWARD AND ADMIT THAT THEY PLACED THE STATEMENT THAT YOU WERE DEMOTED FOR DISCIPLINARY REASONS ON YOUR ONLINE RECORD. IT IS A MYSTERY".

THE ABOVE UPRR DEAD-END, THAT NO ONE CAN FIND THE PERPETRATOR WHO RUINED ONE'S CAREER, IS THE RESPONSE GIVEN TO GROTHER WHEN GROTHER WROTE TO THE UPRR OMBUDSMEN SEEKING **FAIR TREATMENT,** WHICH IS PUBLICLY STATED ON THE UPRR WEBSITE TO BE:

" **A FUNDAMENTAL RIGHT OF ALL UPRR EMPLOYEES"**.

THE ABOVE UPRR FEEDBACK CONTINUES THE PATTERN OF STONE-WALLING AND FEAR INSTILLATION BECAUSE:

- IN ALL UPRR DATA SYSTEM KNOWN TO GROTHER, THE UPRR COMPUTER EXPERTS HAVE DEVELOPED A MEANS TO BACK TRACK ELECTRONICALLY AND DETERMINE WHO MADE THE COMPUTER ENTRY; YET, UPRR NOW STATES

THEY CAN NOT DETERMINE THE PERSON WHO ENTERED THAT CAREER KILLING ENTRY ON THE ONLINE PR SYSTEM

- THE OMBUDSMEN ALSO STATED THAT PAGE 2 OF THE FORM 15121 USED TO DEMOTE GROTHER IN 1997 **HAS BEEN SHREDDED** AND CAN NOT BE RETRIEVED IN ANY WAY AS ONLY PAGE 1 HAS BEEN INPUT INTO THE SUCCEEDING SYSTEM. PAGE 2 OF THE FORM 15121, PER EXHIBIT 14, MAY HAVE ALLEGEDLY CONTAINED THE MANDATORY JUSTIFICATION, WHICH IS REQUIRED TO WARRANT SUCH A HUGE DOWNWARD SALARY ADJUSTMENT. FOR ALL GROTHER CAN FIND OUT, PAGE 2 MAY HAVE BEEN BLANK AND NO WAGE REDUCTION JUSTIFICATION WAS STATED! EVERYONE WAS JUST SIMPLY "IN A HURRY IN 1997" AND GROTHER'S DEMOTION WAS RUBBER-STAMPED THRU!

- THE POSITION OF OMBUDSMEN HAS THE SELF-STATED PURPOSE OF "... MAKING SURE THE COMPANY'S CULTURE AND ORGANIZATION ARE DOING THE RIGHT THING FOR THE EMPLOYEES" (EXH. 25). GROTHER IS OF THE OPINE THAT, TO DATE, ALTHOUGH THE OMBUDSMEN HAS APPARENTLY MADE A DECISION, THE FACTS OF FAIR TREATMENT ABOUT SHOENER'S DECISION HEREIN HAVE BEEN IGNORED, AS THEY SPEAK FOR THEMSELVES.

  OF COURSE, UPRR MAY BE IN A SHORT TERM DOWNWARD FINANCIAL CYCLE BECAUSE OF THE WAR AND BUSINESS CYCLE; BUT THAT IS NO REASON TO THROW THE "FUNDAMENTAL RIGHT TO FAIR TREATMENT FOR ***ALL EMPLOYEES***", OUT THE WINDOW.

B. IN 2001, GROTHER REQUESTED A COPY OF HIS PERSONAL RECORD (PR). AFTER EXPERIENCING SOME POSSIBLE MISINFORMATION FROM HR REPRESENTATIVE LINDA BUTTRILL THAT THE ONLY WAY TO LOOK AT YOUR PR WAS IN THE OFFICE, IN FRONT OF A SUPERVISOR (EXH. 26A), GROTHER FINALLY RECEIVED COPIES OF TWO SETS, WHICH

HAD ALL THE INFORMATION, INCLUDING RECORDS OF PROCESS TRAINING WHILE WITH SPTCO (EX'S 26B &26C).

IN WHAT APPEARS TO BE RETALIATION FOR JUST REQUESTING GROTHER'S PERSONAL RECORDS IN DECEMBER 2001 (OR AN INCREDULOUS COINCIDENCE), GROTHER WAS ORDERED TO SUBMIT TO TWO ALLEGED FRA RANDOM DRUG AND ALCOHOL TESTS ALMOST BACK-TO-BACK! AFTER 33 YEARS WITHOUT A FRA RANDOM TEST, GROTHER WAS ORDERED TO SUBMIT ON SATURDAY A.M. FEBRUARY 2, 2002. THEN, BECAUSE HE HAD A SCHEDULED VACATION IN APRIL, THE NEXT "RANDOM FRA TEST" GOT DELAYED UNTIL MAY 2, 2002 (EX'S 27A-27B). BOTH TESTS WERE NEGATIVE; BUT, THE STATISTICAL RARENESS OF TWO FRA RANDOM TESTS, NEARLY BACK-TO-BACK APPEARS DESIGNED TO INSTILL FEAR AND "MORE APPRECIATION FOR RETALIATION".

C. IN 2002, GROTHER FINALLY IS ABLE TO OBTAIN A COPY OF THE 1997 DEMOTION POLICY (EXH. 14) FROM THE COMPENSATION DEPARTMENT, AFTER BEING ADVISED BY THE HR REPRESENTATIVE (LINDA BUTTRILL-EXH. 24), THAT SHE BASICALLY COULD NOT ASSIST GROTHER WITH THIS.

GROTHER WAS ALSO ORALLY ADVISED BY LOCAL HR REPRESENTATIVE, LINDA BUTTRILL, "WHY DO YOU WANT TO KNOW WHAT UPRR'S 1997 DEMOTION POLICY WAS, **YOU CAN NOT DO A DARN THING ABOUT WHAT HAPPENED TO YOU!" ALSO, AND IN WRITING "...I DOUBT THAT A REBUTTAL WOULD BE OF MUCH USE AT THIS TIME" (EXH. 26A).**

AS GROTHER BEGAN TO ASK MORE QUESTIONS OF MS. LISA BREWSTER (THE COMPENSATION DEPARTMENT) REGARDING WHO HAD THE ABILITY TO ENTER AND OBTAIN DATA REGARDING THE SECRET-TO-GROTHER ONLINE SYSTEM, BREWSTER'S FINAL E-MAIL (UPRR LOTUS NOTE) USED THE "UPRR SECRECY ICON". THE SENDER MUST SPECIFICALLY SELECT THIS SECRECY ICON FOR USE. IT ALLOWS THE SENDER TO TRANSMIT AN E-MAIL ***WHICH CAN NOT BE***

COPIED OR FORWARDED TO ANOTHER PARTY.

EX'S 29A-29C INDICATE GROTHER'S EFFORTS TO PRESENT BREWSTER'S RESPONSE "IN RED" SO ALL CAN SEE THE VAGUE AND VEILED RESPONSE, FOR A REVIEW.

WHAT WAS BREWSTER TRYING TO HIDE?

IT IS GROTHER'S OPINE THAT BREWSTER DID NOT WANT IT KNOWN TO "OTHERS" WHO HAD E-MAIL, THAT A SECRET-TO-UPRR- EMPLOYEE SYSTEM EXISTED, WHICH CAN BE USED TO DESTROY ONE'S CAREER (GROTHER) WITH FALSE DATA ENTERED (DEMOTED FOR DISCIPLINARY REASONS), THAT WAS AVAILABLE TO DECISION MAKERS, WHO CAN MAKE PROMOTION DECISIONS FROM ONLINE SYSTEM.

IN A COMPANY THAT PUBLICLY STATES THAT FAIR TREATMENT IS A "FUNDAMENTAL RIGHT", THE ABOVE EGREGIOUS LACK OF BUSINESS ETHICS CONCERNING THE ENTRY OF FALSE DATA AND APPEARING TO HIDE THE FACTS, UNDERSCORES ANOTHER REASON **INDIVIDUALS FEAR TO FILE A NEW YORK DOCK ARBITRATION DISPUTE.**

D. BREWSTER ALSO INDICATED THAT I SHOULD SEEK A DETAILED EXPLANATION FROM MR. KEN C. PACKARD, THE TUCSON SUPERVISOR OF GROTHER, REGARDING WHY THE SALARY DECREASE TOOK PLACE. BREWSTER'S EXH. 48 STATED HER INABILITY TO GO ANY FURTHER. BREWSTER'S ADVICE WAS A TYPICAL CATCH-22 RESPONSE, GIVEN THE FACT THAT GROTHER HAD ATTEMPTED TO GET A RESPONSE FROM PACKARD SIX TIMES, INCLUDING THREE UPRR COMPANY E-MAILS, TWO AOL E-MAILS AND EXH. 49 CERTIFIED LETTER TO PACKARD'S BUSINESS ADDRESS. PACKARD DID NOT HAVE THE "RESPECT FOR EMPLOYEES" TO ANSWER ANY OF THE ABOVE INQUIRIES.

WHAT IS PACKARD HIDING, THAT HE WILL NOT RESPOND, TO THE PERSON PACKARD FINANCIALLY DESTROYED?

E. GROTHER AND ALL OTHER SERVICE UNIT PHONES (TO OTHER WITNESSES) RECEIVED AN ALL POINTS VOICE MAIL MESSAGE MONDAY, JUNE 16, 1997 FROM PACKARD WHICH GROTHER TAPED AND FORWARDED IN GROTHER'S JULY 15, 1997 APPEAL LETTER TO PRESIDENT DAVIS WHICH STATED:

" ... THAT CONSIDERING THE RESOURCES THAT WE HAD AVAILABLE, THE ENTIRE SERVICE UNIT WAS DOING AN OUTSTANDING JOB..."

GROTHER WAS DEMOTED LESS THAN TWO WEEKS AFTER THE ABOVE SUPPORTING REMARKS – WHAT TYPE OF DISINGENUOUS BEHAVIOR DOES THIS REFLECT?

F. CONCERNING THE ALLEGED SHREDDING OF THE JUSTIFICATION USED TO DEMOTE GROTHER 2 SRG'S, AND THE UNKNOWN DATA ENTRY PERSON, WHO PLACED "DEMOTED FOR DISCIPLINARY REASONS" ON THE SECRET-TO-GROTHER ONLINE SYSTEM USED TO SELECT PERSONS FOR PROMOTION, BOTH ARE EXAMPLES OF A "CALLOUS DISREGARD" FOR THE PERSONAL RECORDS OF EMPLOYEES WHICH CREATES MISTRUST AND FEAR OF RETALIATION. EXH. 52 INDICATES A LETTER FROM BLE REPRESENTATIVE SVOB TO SUPERINTENDENT ROYCE HARDIN AT TUCSON WHICH COMPLAINS OF UPRR DISCARDING SENSITIVE PR DATA IN THE TRASH DUMPSTER, WHERE UNAUTHORIZED PERSONS COULD OBTAIN DISCIPLINE AND INTIMATE DETAILS OF INVESTIGATIONS (INCLUDING DRUG AND ALCOHOL VIOLATION). SVOB STATES "...THEY WERE DISPOSED OF IN A MANNER WHICH MADE THEM ACCESSIBLE TO **OTHER EMPLOYEES**, TRESPASSERS, OR THIEVES FOR WHATEVER ILLICIT OR **NEFARIOUS** PURPOSE MIGHT BE DEVISED (E.G. EXTORTION, BLACKMAIL, IDENTITY THEFT).

GROTHER'S CRITICAL DATA WAS ALSO "GARBAGE DUMPED" (SHREDDED) AND "**OTHER EMPLOYEES**" ACTUALLY DID PERFORM A **NEFARIOUS** PURPOSE (SECRET ENTRY ON THE

SECRET ONLINE SYSTEM), WHICH ENDED GROTHER'S ABILITY TO BE PROMOTED. UPRR'S LACK OF FAIRNESS IN THE CONTROL OF CRITICAL RECORDS AND THE ABILITY OF OTHERS TO USE THE SECRET-TO-GROTHER ONLINE SYSTEM FOR RETALIATION CORROBORATES ANOTHER REASON TO NOT CONSIDER ARBITRATION, AN EARLIER AGE THAN 55.

11. INITIALLY, ON DECEMBER 28, 2002 THE OMBUDSMEN STATED THAT PACKARD HAD STATED 1997 WAS A "VERY CONFUSING TIME" AND PACKARD "COULD NOT REMEMBER WHAT HAPPENED". THEN AFTER A LITTLE "SPINNING TIME BY PACKARD", ON JANUARY 14, 2003, THE OMBUDSMEN ORALLY ADVISED THAT HE WOULD NOT BE ABLE TO FURTHER PROCESS GROTHER'S REQUEST FOR COMPENSATION FAIRNESS; IN PART, BECAUSE HE HAD RECEIVED FEEDBACK FROM PACKARD AND MURPHY, THE PERSON'S WHO SEVERELY DISPLACED GROTHER THAT GROTHER'S 1997 DEMOTION WAS RELATED TO "POOR PERFORMANCE" AS:

"WE LOOKED AT A LOT OF PEOPLE AND GROTHER DID NOT PERFORM AS WELL AS THEM".

FINALLY, ON 3/10/03 OMBUDSMAN ETHINGTON ADVISED IN WRITING THAT GROTHER'S 7/1/97 DEMOTION REASON WAS:

"THE EXPLANATION WAS GIVEN THAT YOUR PERFORMANCE WAS NOT WHAT WAS NEEDED". (EXHIBIT 55)

(SOUNDS LIKE A MERGER RELATED DECISION TO ME AS WITNESSES AND DOCUMENTATION ARE AVAILABLE TO TESTIFY THAT THE YARD CONSOLIDATION EXPERIMENT CAUSED TUCSON TO HAVE A JUNE 1997 SERVICE FAILURE)

HOW IS THE ABOVE UPRR EXPLANATION APPROPRIATE JUSTIFICATION TO TAKE AWAY TWO SRG'S OR $1,272/MO., WHICH GROTHER HAD WORKED 28 YEARS TO OBTAIN?

THE ABOVE IS NOT LOGICAL FOR SEVERAL REASONS; INCLUDING, BUT NOT LIMITED TO:

A. PACKARD HAD SELECTED GROTHER AS THE SENIOR MTO (SRMTO) AT TUCSON EFFECTIVE APRIL 16, 1997 AFTER HAVING THE OPPORTUNITY TO OBSERVE GROTHER'S PERSONAL PERFORMANCE FOR 3.5 MONTHS AND REVIEW GROTHER'S OUTSTANDING RECORD.

HOW COULD GROTHER'S PERSONAL PERFORMANCE DETERIORATE SO MUCH IN TWO (2) MONTHS; ESPECIALLY, WITH GROTHER'S BACKGROUND AS A SOLID, OUTSTANDING PERFORMER FOR 28 YEARS?

THE ONLY LOGICAL REASON FOR THE "JUNE SERVICE FAILURE" IS THE SHOENER MERGER TRANSACTION YARD CONSOLIDATION EXPERIMENT STARTING MAY 16, 1997 AND PEAKING MID-JUNE (SLIGHTLY OVER ONE MONTH), IN A MERGER EXPERIMENT FAILURE, WHICH WAS NOTHING GROTHER HAD DECIDED.

B. IN GROTHER'S JULY 15, 1997 LETTER TO UPRR PRESIDENT DAVIS, GROTHER STATED: " I HAD NO INDICATION OF PERSONAL UNSATISFACTORY PERFORMANCE BEFOREHAND..." ABOVE STATEMENT WAS NOT DISPUTED BY PRESIDENT DAVIS, AS DAVIS REFERS TO A **JUNE** SERVICE FAILURE. THE STATEMENT BY PACKARD TO THE OMBUDSMEN THAT SAID FAILURE WAS THE RESULT OF POOR PERSONAL PERFORMANCE OF GROTHER IS **DEFAMATION OF CHARACTER, AS IT WAS SIMPLY A MERGER YARD CONSOLIDATION EXPERIMENT THAT FAILED DUE TO LACK OF CAPACITY/CURFEWS AND NOT DUE TO ANY DECISION OR FAULT OF GROTHER.**

C. UPRR HAS BEEN REQUESTED, AS PART OF GROTHER'S FAIRNESS LETTER REQUEST FOLLOW-ON, TO VERIFY THE FOLLOWING ISSUES, WHICH WILL CONCLUSIVELY

CORROBORATE THAT, THE "PERSONAL PERFORMANCE" OF GROTHER WAS NOT THE ACTUAL REASON FOR GROTHER'S 1997 DEMOTION. UPRR CAN AND SHOULD PROVIDE THIS **FAIRNESS** DATA. AS OF THIS WRITING, UPRR HAS NOT PRODUCED THE FOLLOWING EXH. 53 VERIFICATIONS REQUESTED BY GROTHER, WHICH WOULD CLEARLY DEMONSTRATE THAT TUCSON TERMINAL WAS ORDERED IN 1997 TO PERFORM AN IMPOSSIBLE MERGER RELATED TASK AND FAILED:

- PRODUCE OR REPRODUCE THE 1997 TUCSON YARD CAPACITY MODEL WHICH CONCLUSIVELY STATED THAT ALL EAST AND WEST TRAFFIC TO & FROM PHOENIX AND PICACHO SETOUT TRAFFIC COULD NOT BE SWITCHED AT TUCSON BECAUSE OF EXCESSIVE VOLUME FOR 1997 YARD CONDITIONS (I.E. NO E/E SWITCHING LEAD, BAD TRACKS). (IF UNAVAILABLE, USE 2002 DATA WHICH MUST INCLUDE **ALL THE E/W TRAFFIC, INB/OUTBOUND FOR PHOENIX.**

SHOULD THE LATEST UPRR CAPACITY STUDY INDICATE THAT IT IS SUDDENLY POSSIBLE TO CONSOLIDATE **THE ENTIRE EAST AND WEST TRAFFIC DESTINED TO & FROM PHOENIX AT TUCSON, WHY NOT DOING IT?**

THERE ARE GOOD REASONS THAT THIS MERGER RELATED YARD CONSOLIDATION EXPERIMENT WAS NOT DONE BEFORE MID-MAY 1997; NOR, HAS **ALL EAST AND WEST TRAFFIC TO AND FROM PHOENIX BEEN ATTEMPTED AGAIN, WITH SWITCHING CONSOLIDATED AT TUCSON.** THE FACTS AND NEXUS SPEAK FOR THEMSELVES!

- THE ENGINEERING DEPARTMENT SHOULD BE ASKED TO CONFIRM THAT TUCSON HAD M OF W CURFEWS ON BOTH SIDES OF TUCSON DURING THE PERIOD MAY 16 – JUNE 26, 1997, WHICH WOULD NOT ALLOW TRAINS TO ARRIVE OR DEPART TUCSON BETWEEN THE HOURS OF 0700-1900 M-F.

- **ALL THE MANAGERS AND UNION OFFICIALS WHO**

WERE AT TUCSON DURING SHOENER'S EXPERIMENT SHOULD BE INTERVIEWED TO DETERMINE IF IT WAS GROTHER'S "POOR PERSONAL PERFORMANCE" OR THE EFFECT OF THE PHOENIX MERGER EXPERIMENT. THESE PERSONS WOULD INCLUDE MASSEURS BOB STREFELDER, RAY SZAREK, DAVID HAMPTON, TOM F. MOORE (UTU), KEN KROEGER (BLE), H. L. MCDOWELL, AND ANY MEMBER OF THE 1997 SAFETY COMMITTEE.

- THE UPRR MANAGERS WHO DEMOTED GROTHER, MASSEURS KEN C. PACKARD AND THOMAS F. MURPHY ARE STILL EMPLOYED BY UPRR. IT WOULD APPEAR HIGHLY APPROPRIATE THAT THESE TWO MANAGERS SHOULD BE ASKED TO "RECREATE THE DETAILED PERSONAL PERFORMANCE FAILURE ISSUES OF GROTHER".

WHAT DID GROTHER DO THAT WAS SO HEINOUS TO DESERVE SUCH A WHOOPING $1,272/MO WAGE CUT?

- WHAT WERE GROTHER'S HEINOUS POOR PERSONAL PERFORMANCE FAILURES THAT RESULTED IN GROTHER BEING CUT TWO SALARY RATE GRADES OR ONE BAND IN CURRENT UPRR SALARY PARLANCE? SURELY, ANY PERSONAL PERFORMANCE THAT WAS SO HEINOUS, SHOULD BE EASY TO RECALL IN DETAIL? WHAT IS THE "EVIDENCE", WHICH WAS AND HAS NEVER BEEN SHOWN OR DISCUSSED WITH GROTHER ABOUT HIS "PERSONAL PERFORMANCE"? SUCH A HEINOUS ACT, RESULTING IN A $1,272 MONTH PAY CUT, MUST BE MEMORABLE, AS OTHER "SERVICE FAILURE MANAGERS" WERE NOT CUT IN PAY!

IN DIRECT CONTRAST, IT APPEARS CRYSTAL CLEAR THAT OTHER UPRR MANAGERS IN THE INFAMOUS 1997 SYSTEM-WIDE SERVICE FAILURES HAD MERGER RELATED SERVICE PROBLEMS; YET, NONE OF THE PRIOR TO THE MERGER UPRR MANAGERS WERE REDUCED IN PAY OR PENSION! UPRR COMPENSATION RECORDS MAINTAINED TO SATISFY THE IRS SHOULD READILY CORROBORATE NO OTHER SERVICE FAILURE WAGE REDUCTIONS.

THEREFORE, THERE HAS BEEN NO DISSIPATION OF EVIDENCE AS ON-THE-GROUND WITNESSES OF GROTHER'S MAY-JUNE 1997 "PERSONAL PERFORMANCE" ARE THERE AND THE WAGE CUT COMPARISONS ARE READILY AVAILABLE. IN ADDITION, STABLE AND PREDICTABLE LABOR MANAGEMENT RELATIONS HAVE NOT BEEN AFFECTED BY DISPLACING AN EX-SPTCO MANAGER.

- CORROBORATION THAT WEST COLTON WAS ALSO CREATING RE-SWITCHING FOR TUCSON DURING MAY-JUNE, 1997 SHOULD ALSO BE CONFIRMED. BASED ON ONE SAMPLE DOCUMENT DATED JUNE 10, 1997 (EXH. 12), THE LAPXM PER THE SERVICE PLAN WAS TO OPERATE DIRECTLY TO PHOENIX. HOWEVER, INVARIABLY TUCSON WOULD RECEIVE A MESSAGE ON NEARLY A DAILY BASIS STATING THAT THE ENTIRE TRAIN HAD TO YARDED AT TUCSON AND RESWITCHED STEM TO STERN AS WEST COLTON HAD MILL OR MINE-RUN THE TRAIN WITH PHOENIX AND TUCSON TRAFFIC MIXED. THIS PROBLEM WAS KNOWABLE ONLY AFTER GOING BY THE SCANNER. **WEST COLTON WAS ALSO DUMPING ON TUCSON!**

  MOREOVER, THE REVERSE WAS ALSO TRUE, AS PHOENIX WAS SENDING ALL WEST TRAFFIC TO TUCSON ALSO INSTEAD OF OPERATING A PXLAM AS AGREED.

- ASK REGIONAL VP STEVE BARKLEY TO CORROBORATE THE SERVICE EFFECTS OF PLACING AN M OF W TWELVE (12') HOUR DAYLIGHT CURFEW ON BOTH SIDES OF A TERMINAL LIKE SAN ANTONIO OR TUCSON. WHAT IS DONE NOW TO PROTECT SUCH TERMINALS?

  ASK BARKLEY IF SUCH A DOUBLE CURFEW WOULD BE A GOOD TIME TO ATTEMPT DOUBLING THE VOLUME OF TRAFFIC COMING INTO SAID TERMINAL.

- ASK THE QUALITY DEPARTMENT IF THEY CAN DETERMINE WHO WAS FLOWN TO TUCSON AROUND THE

- FIRST WEEK OF JUNE 1997 AND LEFT IN DISMAY STATING SOMETHING LIKE - IT IS IMPOSSIBLE TO DO WHAT UPRR HAS ASKED TUCSON TO DO. HOW CAN YOU PLAN WITH 12' CURFEWS ON BOTH SIDES, NEARLY DOUBLE THE VOLUME AND NO INCREASE IN PERSONNEL OR TRACKAGE? HE THOUGHT IT BEST TO LEAVE ASAP BEFORE "SOMEONE" DECIDED TO HOLD HIM ACCOUNTABLE FOR A TRAIN DISPATCHING SCENARIO WHICH CAUSED RANDOM AND BUNCHED ARRIVALS OF BOTH THE EASTBOUND AND WESTBOUND TRAIN FLEETS DURING DARKNESS AS MAIN TRACK OPERATIONS WERE CLOSED BY M OF W CURFEWS ON BOTH SIDES OF TUCSON STARTING MAY 1997. (I THINK HIS FIRST NAME WAS DAVE-I THINK. SOME HAVE SUGGESTED IT MAY HAVE BEEN DAVID WHALEN OR DAN WHITE; BUT UPRR EXPENSE ACCOUNTS SHOULD SELECT.

10. BASED ON HUNDREDS OF DISCUSSIONS BY GROTHER, THE CONCEPT OF A MANAGER BEING REDUCED IN COMPENSATION AS A RESULT OF DEMOTION WAS UNHEARD OF AT UPRR IN 1997. THAT BELIEF WAS SO STRONG; THAT, HR PERSONNEL ISSUED EXH. 30, "SUMMARY OF PLAN CHANGES: EFFECTIVE JANUARY 1, 1998 CONCERNING EX-SPTCO PENSION PLAN RIGHTS WHICH STATED:

"*IN NO CASE* WILL YOUR BENEFIT UNDER THE **AMENDED** PLAN BE LESS THAN THE PLAN BENEFIT YOU EARNED THROUGH DECEMBER 31, 1998"

THE ABOVE DOES NOT APPEAR TO BE TRUE IN GROTHER'S CASE, AS GROTHER'S HIGHER PAY BETWEEN 1995-1997 WILL NOT BE ALLOWED IN THE CALCULATION OF HIS UPRR PENSION. THE GROTHER'S WILL BE FINANCIALLY HARMED FOREVER! GROTHER WAS MAKING $6,200 MONTH IN SEPTEMBER 1995 AND HIS WAGES **MAY** NOT RETURN TO THAT LEVEL UNTIL 2005, OR LATER. THAT IS AN ESTIMATED **EIGHT YEAR PUNISHMENT** JUST TO EARN THE SAME AMOUNT AND A LIFETIME OF PENSION / RAILROAD RETIREMENT LOSSES, "FOR JUST BEING IN TUCSON", WHEN SOMEONE ELSE MADE AN INITIAL MERGER

RELATED DECISION WITHOUT USING THE "QUALITY PROCESS" AND GROTHER WAS SEVERELY SCAPEGOATED?

12. PARAGRAPH 9 ABOVE CONCERNS AN ENTRY THAT WAS MADE ON THE ONLINE PERSONNEL SYSTEM WHICH WAS SECRET-TO-GROTHER; YET, KNOWN AND USED BY MANAGERS OF UPRR WHO MADE DECISIONS ON GROTHER'S ABILITY TO BE CONSIDERED FOR PROMOTION 1997-2003

THIS ONLINE ENTRY WAS PARTIALLY ACCOUNTABLE FOR GROTHER NOT BEING PROMOTED OR EVEN SELECTED FOR A LATERAL TRANSFER FOR THE LAST 5.5 YEARS AS THOSE WHO PROMOTE HAD EITHER ACCESS TO THIS SECRET ONLINE SYSTEM FROM THEIR OWN AUTHORITY OR THROUGH HR AND OTHER UPRR REPRESENTATIVES. THIS ONLINE SYSTEM HAS BEEN USED BEHIND GROTHER'S BACK TO DESTROY GROTHER'S CAREER AND NOW THE OMBUDSMEN SIMPLY STATES "NO ONE WANTS TO COME FORWARD FOR ENTERING THIS DEMOTED FOR DISCIPLINARY REASONS ON YOUR ONLINE PERSONAL RECORD".

AS CORROBORATION, EXHIBIT 31 INDICATES A PARTIAL LIST OF UPRR POSITIONS APPLIED FOR AND THE UPRR LACK OF RESPONSE OR RETALIATION REGARDING MY RESUME. IN SUMMARY, GROTHER APPLIED FOR SIX POSITIONS BACK TO ARIZONA IN 1999-2000 AND GROTHER ONLY RECEIVED ONE RESPONSE WHICH BASICALLY STATED TO GROTHER THAT BASED ON ALL APPLICANTS, YOUR EXPERIENCE, EDUCATION, TRAINING, ARE NOT ACCEPTABLE. THIS COMPUTER GENERATED RESPONSE WAS RECEIVED **REGARDLESS OF THE FACT THAT GROTHER HAD PERFORMED 22 MONTHS AT THE SAME LOCATION (TUCSON) IN THE # 1 POSITION AT TUCSON ITSELF OR TWO SALARY RATE GRADES ABOVE THE POSITION WHICH HAD GROTHER APPLIED FOR (EX'S. 32A-32B). EXHIBITS 33A – 33B IS ANOTHER POSITION THAT GROTHER WAS NOT EVEN SELECTED TO BE INTERVIEWED; DESPITE, GROTHER'S 22 MONTHS, ON THAT EXACT JOB AS INCUMBENT.**

WHY DID UPRR'S ROYCE HARDIN'S COMPUTER GENERATED, "TRY AGAIN LATER RESPONSE" IMPLY THAT GROTHER WAS NOT QUALIFIED FOR A POSITION THAT HE HAD BEEN THE SUPERVISOR OF FOR 22 MONTHS? (GOES TO PATTERNS OF MISTRUST AND RETALIATION).

13. IN 1997, THE UPRR MANAGERS WHO ARBITRARILY DEMOTED GROTHER KNEW THAT GROTHER HAD A VERY SICK WIFE WITH SYSTEMIC LUPUS AND **GROTHER COULD NOT RISK THE LOSS OF MEDICAL INSURANCE FOR HIS WIFE, AS THAT WOULD CERTAINLY RESULT IN HER DEATH!**

A. THERE WAS A CRITICAL QUESTION IF INSURANCE WOULD BE MADE AVAILABLE UNDER COBRA IN 1997. TO ILLUSTRATE ANOTHER CORROBORATION OF "CREATING FEAR OF RETALIATION". IN FRANCISCONI V. UNION PACIFIC RAILROAD, CASE NO. 20000 408-CA, VPO SHOENER APPARENTLY DENIED FRANCISCONI'S SICK WIFE COBRA COVERAGE IN 1997 (EXH. 35). SUCH A **DENIAL OF COBRA** WOULD HAVE BEEN VERY DESTRUCTIVE TO GROTHER'S WIFE, IF NOT LIFE THREATENING. THEREFORE, THE RISKS WERE TOO HIGH WITH THAT TYPE OF 1997 CORPORATE CULTURE RETALIATION "ALLOWED" AND "ACCEPTED".

IF AN INDIVIDUAL HAD TO MAKE MEDICAL INSURANCE PAYMENTS, EVEN IN 1997, THE COST WOULD HAVE BEEN STAGGERING. AARP SOURCES INDICATE THE "FAMILY MONTHLY PREMIUM" MAY HAVE BEEN OVER $600 A MONTH AND POSSIBLY MORE FOR A SEVERE PRE-EXISTING CONDITION, ASSUMING IT WOULD BE POSSIBLE TO EVEN OBTAIN INSURANCE FOR ONE'S PRE-EXISTING CONDITIONS. EXHIBITS 36B-36E ARE A FEW EXAMPLES OF HOW HARD IT IS FOR MRS. GROTHER TO OBTAIN ANY TYPE OF INSURANCE, INCLUDING THE NEW LONG TERM CARE UPRR HAS RECENTLY OFFERED THOROUGH ANOTHER COMPANY (CMA).

B. IT IS NOTEWORTHY THAT COBRA APPEARS TO ONLY PROVIDE COVERAGE FOR EIGHTEEN (18) MONTHS. IF

DISMISSED IN 1997 FOR FILING AN ARBITRATION, LAWSUIT OR SIMPLY REQUESTING ANOTHER APPEAL, THAT WOULD MEAN THAT WHEN THE COBRA COVERAGE RAN OUT, GROTHER WOULD HAVE BEEN 52 YEARS OLD AT THAT TIME AND **WITHOUT** MEDICAL INSURANCE FOR HIS WIFE - AN ILL LUPUS PATIENT, UNLESS FOUND EMPLOYMENT ELSEWHERE.

ALL READERS - CONSIDER THIS PLEASE:
ALL OF US ARE ONLY ONE JOB AWAY FROM A HEALTH INSURANCE DISASTER.

AN ESTIMATED INSURANCE BILL OF $600 PLUS PER MONTH WOULD BE A HEFTY BILL FOR GROTHER; ESPECIALLY, IF TERMINATED IN 1997 FOR ANY NUMBER OF POSSIBLE "SPIN DOCTOR ACCUSATIONS". IMAGINE LIVING ON GROTHER'S UPRR PENSION, ESTIMATED AT LESS THAN $400 PER MONTH IN 1997, AS GROTHER WAS, AND IS "TOO YOUNG" FOR RAILROAD RETIREMENT BENEFITS. THAT WOULD HAVE BEEN GROTHER'S "FAIRNESS REWARD" FOR 28 YEARS OF DEDICATED AND LOYAL RAILROAD SERVICE TO SPTCO AND TEN MONTHS WITH UPRR.

WOULD ANYONE IN THEIR RIGHT MIND DARE TO FILE FOR AN UNCERTAIN ARBITRATION PROCESS, UNDER THE ABOVE FINANCIAL CONDITIONS?

IT IS GROTHER'S UNDERSTANDING THAT NOW THAT GROTHER HAS REACHED FIFTY-FIVE (55) THAT GROTHER IS CATEGORIZED AS AN OFFICIAL "RETIREE" BY THE UPRR PENSION PROGRAM (I.E. ELIGIBLE; BUT NOT REQUIRED, TO FILE FOR GROTHER'S UPRR PENSION). AS A "RETIREE", GROTHER IS NOW ALLEGEDLY ELIGIBLE TO OBTAIN MEDICAL INSURANCE FROM THE UPRR, ASSUMING THAT GROTHER FILED FOR HIS SEVERELY AGE AND DEMOTION REDUCED UPRR PENSION AND PAID THE COST OF SUCH MEDICAL INSURANCE COVERAGE. WITHOUT SAID MED. INSURANCE, GROTHER HAS BEEN PARALYZED WITH NO FUNDS.

IN SUMMARY, BEFORE REACHING AGE 55, GROTHER WAS NOT ELIGIBLE FOR THIS SUBSIDIZED UPRR MEDICAL

INSURANCE COVERAGE AND COULD NOT RISK SEEKING RECOVERY OF GROTHER'S COMPENSATION AND FRINGE BENEFITS TAKEN AWAY AS A DISPLACED EMPLOYEE. EVEN AT AGE 55, ONE GIVES UP A WHOOPING 50% OF ONE'S UPRR RETIREMENT, IF THEY START RETIREMENT AT AGE 55!

MOREOVER, IT TOOK GROTHER SEVERAL YEARS TO OBTAIN EVIDENCE OF WRONGFUL UPRR BUSINESS ETHICS, UNFAIRNESS, INTIMIDATION AND RETALIATION BY CERTAIN UPRR MANAGERS, INCLUDING AN APPEAL "TO FAIR TREATMENT", WHICH IS ALLEGED AS THE FUNDAMENTAL RIGHT OF *ALL UPRR* EMPLOYEES. ALL THE ABOVE EFFORTS HAVE LED TO NO APPROPRIATE RESPONSE FROM UPRR, CONCERNING COMPENSATION FOR BEING A DISPLACED EMPLOYEE. LAST UPRR ANSWER WAS 3/10/03 ON FAIRNESS!

MUCH OF THE DELAY PRESENTING THIS DISPUTE COULD HAVE BEEN REDUCED. IF SELECT UPRR REPRESENTATIVES HAD BEEN FORTHCOMING AND LESS RETALIATORY IN THEIR ACTIONS AND RESPONSES AS REQUIRED BY UPRR BUSINESS ETHICS.

14. IN 2001, UPRR OFFERED A VOLUNTARY EARLY RETIREMENT PROGRAM TO UPRR NON-AGREEMENT (MANAGER) PERSONNEL, AT WHICH TIME GROTHER WAS 54 YEARS OLD. ONE OF THE WARNINGS IN THE UPRR'S VERP VHS TAPE WAS THAT IF YOU ARE NOT 55 YEARS OLD, DO NOT ACCEPT THIS OFFER, UNLESS INDEPENDENTLY WEALTHY, OR COULD ACCEPT A SUBSTANTIAL DROP IN YOUR PENSION. THIS IS CORROBORATION THAT AGE 55 IS THE POINT WHERE UPRR PENSION BENEFITS PROVIDE "BARE BONES BENEFITS".

SAID 2001 VERP ALSO CLEARLY DISPLAYED JUST HOW BADLY GROTHER'S UPRR PENSION HAD BEEN DAMAGED BY THE 1997 DEMOTION. WHEN COMPARED TO ANOTHER MANAGER WITH COMPARABLE AGE AND USING GROTHER'S OLD 1997 EARNING LEVEL (ESCALATED BY AVERAGE OF .035% PER ANNUM FOR INCREASES), GROTHER'S DISMAL

VERP PACKAGE WAS GREATLY REDUCED IN COMPARISON. THE OMBUDSMEN (271-2113) ADVISED FEBRUARY 2, 2001 THAT THE VERP HAD SUCH A "RETIREMENT REDUCTION", IN GROTHER'S CASE, BECAUSE IT WAS ONLY BASED ON ONE'S LAST THREE YEARS OF PAY (1998-2000) IF YOU WERE A EX-SPTCO OFFICER WHICH ELIMINATED GROTHER'S HIGHER EARNINGS IN 1996-1997. THE VERP ALSO RESULTED IN QUESTIONS WHICH EXPOSED THE FACT THAT THE "PENSION PLAN OF UPRR FOR EX-SPTCO PERSONNEL" DOES NOT ALLOW WAGES BEFORE JANUARY 1, 1998 TO BE INCLUDED IN THE "FAE" PENSION CALCULATIONS OF UPRR, CREATING GROTHER A SUBSTANTIAL PENSION REDUCTION.

GROTHER IS STILL AWAITING A RESPONSE FROM THE PENSION DEPARTMENT TO COMPUTE RETIREMENT DAMAGE. EXHIBIT 46 INDICATES AN AUGUST 25, 2002 REQUEST.

15. TO THE LAYMAN, BINDING ARBITRATION BY THE NATIONAL MEDIATION BOARD APPEARS TO BE EXTREMELY DIFFICULT FOR AN INDIVIDUAL, WHO IS NOT REPRESENTED BY A UNION. IN ADDITION, ARTICLES HAVE BEEN WRITTEN WHICH INDICATE THAT SOME ARBITORS MAY FEEL PRESSURED TO RENDER DECISIONS THAT WILL NOT ALIENATE COMPANIES WHO MAY HIRE THEM AGAIN, AS OPPOSED TO THE SOLE EMPLOYEE WHO HAS NO FUTURE BUSINESS TO OFFER. BELOW ARE SPECIFIC EXAMPLES OF HOW AN INDIVIDUAL WOULD BECOME CONCERNED ABOUT THE POSSIBILITY OF RECOVERY FROM ARBITRATION WITH THE RISKS STATED IN PUBLICLY PUBLISHED DOCUMENTATION. GIVEN ONE'S CAREER HAS ALREADY BEEN ENDED AND CRITICAL MEDICAL INSURANCE FURTHER AT RISK, HOW COULD ONE REASONABLY FILE FOR ARBITRATION BEFORE ALL KNOWN FACTS (AVAILABLE, AS MANY ARE NOT MADE READILY AVAILABLE) FACTS WERE OBTAINED FROM SOME RECALCITRANT PERSONS AND THE INSURANCE ISSUE IS PROTECTED AT AGE 55 ("RETIREE"). BELOW ARE A FEW SAMPLES OF ARTICLES WHICH CREATE EXTREME FEAR IN REQUESTING ARBITRATION AS AN INDIVIDUAL.

A. RAILWAY AGE ARTICLE DATED JULY 18, 1999 ON NEW YORK DOCK/STB AGREEMENT WHICH DISCUSSES "CRAM-DOWN" REGARDING AN ALLEGED BIAS BY "RAIL REGULATORS" (I.E. SURFACE TRANSPORTATION BOARD), WHICH AFFECTED ARBITOR DECISIONS (EXH. 37):

"MYRON (BROTHERHOOD OF M OF W) INSISTS RAIL REGULATORS SO OFTEN OVERTURNED ARBITRATED DECISIONS FAVORABLE TO EMPLOYEES DURING THE 1980'S THAT **ARBITORS BECAME CONDITIONED TO GRANTING RAILROADS UNDUE PREFERENCE."**

B. EXH. 38 INDICATES AN ARTICLE FROM AARP WHICH QUOTES PAUL PALEFSKY, A LAWYER IN SAN FRANCISCO FOR THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION STATING:
" ...ARBITORS MAY FEEL PRESSURED TO RENDER DECISIONS THAT WILL PLEASE (OR AT LEAST WON'T ALIENATE) COMPANIES THAT MAY HIRE THEM AGAIN."

C. SEVERAL ATTORNEYS HAVE STATED THAT AN INDIVIDUAL FILING ARBITRATION IS AT A DISADVANTAGE, AS YOU HAVE "NO REPEAT BUSINESS TO OFFER AN ARBITOR" AND ARBITORS NEED TO MAKE A LIVING TOO. SUCH STATEMENTS DO NOT INSPIRE AN INDIVIDUAL CLAIMANT TO COME FORWARD.

16. GROTHER WAS PERPLEXED BY HIS SEVERE 1997 PAY REDUCTION THAT WAS RELATED TO GROTHER'S SEVERE DEMOTION BECAUSE A PRIOR TO MERGER MGR. WITH UPRR WAS "DEMOTED AND TRANSFERRED FROM OMAHA SAFETY DEPARTMENT" TO TUCSON ON/ABOUT FEBRUARY 15, 1997 (FOUR MONTHS BEFORE GROTHER'S DEMOTION DECISION). HE BRAGGED THAT HE HAD CONNECTIONS AT UPRR HQ. AND HIS HIGHER PAY FROM HIS OMAHA SAFETY JOB WOULD NOT BE REDUCED; DESPITE HIS DEMOTION. HIS NAME WAS THEODORE F. INGRAM AND GROTHER IS SURE THAT HIS PRESENT WAGE HAS CONTINUED TO ESCALATE MUCH HIGHER THAN GROTHER'S, AS GROTHER IS STILL TRYING TO GET BACK TO GROTHER'S 1995 LEVEL OF PAY! WHY WAS

GROTHER TREATED DIFFERENTLY THAN INGRAM, WHO HAD BEEN DEMOTED AND TRANSFERRED? ALL THE ABOVE INCONSISTENT WAGE REDUCTION TREATMENTS CREATE FEAR OF RETALIATION AND MORE DISCRIMINATION.

17. UPRR PROVIDED AN INSERT WITH GROTHER'S DIMINISHED CHECK WHICH WAS RECEIVED MARCH 1, 2001 WHICH ADVISED GROTHER "IF YOU RETIRE AND TAKE A CASH DISTRIBUTION FROM YOUR 401(K) PLAN, YOU'LL PAY INCOME TAX ON THE TAXABLE PORTION OF THE DISTRIBUTION - PLUS A 10% FEDERAL TAX PENALTY, **IF YOU ARE UNDER AGE 55 WHEN YOU SEPARATE FROM THE COMPANY".**

THIS AGAIN GOES TO THE ISSUE OF BEING UNABLE TO TAKE ANY REALISTIC ARBITRATION ACTION BECAUSE ONE WOULD BE WIPED OUT FINANCIALLY, AS A MANAGEMENT INDIVIDUAL, UNTIL AGE 55 IS REACHED.

THIS APPEARS TO ALSO MEAN THAT SHOULD ONE HAVE BEEN TERMINATED (BEFORE AGE 55), AS RETALIATION FOR FILING ARBITRATION OR EVEN A FURTHER APPEAL TO SENIOR MANAGEMENT AND TAKE A CASH DISTRIBUTION FROM ONE'S 401(K) TO PAY FOR MEDICAL INSURANCE AS YOUR "EARLY UPRR PENSION" IS ESTIMATED AT LESS THAN $400 PER MONTH IN 1997, THE RESULT WOULD BE FURTHER FINANCIAL PUNISHMENT IN PERPETUITY. MEDICAL INSURANCE AND LIVING EXPENSE WITHDRAWALS WOULD ELIMINATE ONE'S DEMINIMUS LIFETIME SAVINGS. GROTHER COULD NOT AFFORD TO LOSE A SUBSTANTIAL PORTION OF GROTHER'S SAVINGS PLAN ON "UNNECESSARY TAXATION".

OF COURSE, ONE WOULD TRY TO OBTAIN REPLACEMENT EMPLOYMENT. HOWEVER, THE SPECIALIZED SKILLS OF RAILROADING (ESPECIALLY AS AN OPERATING OFFICER) ARE NOT HIGHLY MARKETABLE. AGE IS ALSO A FACTOR. AGE FIFTY-ONE AND UP IS A "HARD SELL" WITH ONLY MARKET SPECIFIC RAILROAD MANAGEMENT SKILLS.

18. IT IS WELL ESTABLISHED THAT PSYCHOLOGICAL AND PHILOSOPHICAL CLASHES OCCUR AS AN AFTERMATH OF MERGERS. PER MITCHELL LEE MARKS, PHD, "...WORKERS THAT REMAIN WILL BECOME ... SCARED..." (EXH. 47) THUS BEING "SCARED"; ESPECIALLY GIVEN BEING DEMOTED TWO SALARY RATE GRADES WITHIN THREE MONTHS OF THE MERGER TRANSACTION VP'S ARRIVAL (FOR NO FAULT OR DECISION OF YOUR OWN), DOES CREATE FEAR TO FURTHER APPEAL, ARBITRATE OR SEEK OTHER LITIGATION.

19. GIVEN THAT GROTHER IS HARASSED AND THREATENED ALMOST WEEKLY WITH LOSING HIS JOB OF 34 YEARS FOR ANYTHING FROM "FAILURES OF THE UPRR REPORTING SYSTEMS (I.E. SOMEONE ENTERED THE WRONG DEPARTURE DELAY CODE") TO OTHER ISSUES TOTALLY OUT OF GROTHER'S CONTROL, HOW COULD GROTHER DARE TO FILE ARBITRATION BEFORE AT LEAST AGE 55?

20. THE INVOLUNTARY SEVERANCE PROGRAMS AT UPRR FOR NON-AGREEMENT (MANAGERS) HAVE CONTINUED A PATTERN OF BEING CONTINUOUSLY REDUCED SINCE THE MERGER. INITIALLY, THOSE WITH OVER TWENTY YEARS OF SERVICE (LIKE GROTHER) HAD BEEN OFFERED EIGHTEEN (18) MONTHS OF SEVERANCE PAY PER MY RECORDS. ON DECEMBER 28, 2000, GROTHER HAD JUST TURNED 53 YEARS OF AGE AND UPRR ANNOUNCED THAT SEVERANCE PAY WAS REDUCED TO TWELVE (12) MONTHS FOR THOSE OVER TWENTY YEARS OF SERVICE. THEREFORE, SHOULD ONE APPEAL, FILE ARBITRATION OR TAKE ANY OTHER ACTION, ONE COULD READILY BE IDENTIFIED FOR "INVOLUNTARY SEVERANCE", DEPENDING ON "CONTROLLED CONDITIONS". UPRR HAS THE ABILITY TO INITIATE ANOTHER ROUND OF INVOLUNTARY BUYOUTS AT ANY TIME AND THOSE THAT FIGHT BACK WILL GO TO TOP OF "ELIMINATION LIST". WITHOUT AGE 55 MEDICAL INSURANCE, THERE IS NO FINANCIALLY REASONABLE WAY TO ARBITRATE.

TO ILLUSTRATE UPRR'S APPROPRIATE RIGHT AND CONTINUING EFFORTS TO REDUCE MANAGEMENT PERSONNEL, EXH. 51 IS A RECENT OMAHA WORLD-HERALD ARTICLE DATED JANUARY 14, 2003 INDICATING, IN PART:

"...THERE MAY BE MANY INSTANCES WHERE AFFECTED PEOPLE WON'T BE OF RETIREMENT AGE"

"...EMPLOYEES ARE NOT BEING OFFERED EARLY RETIREMENT" "

"...SEVERANCE PACKAGES WERE BASED ON YEARS OF SERVICE BUT DECLINED TO GIVE DETAILS"

"WHEN UPRR CUT JOBS IN 2001, EMPLOYEES WERE OFFERED A SEVERANCE PACKAGE AND A BUYOUT PROGRAM"

GROTHER HAD TO WAIT UNTIL HIS 55TH BIRTHDAY TO EVEN START ASKING FOR HIS PERSONAL RECORD, IN FEAR THAT THIS WOULD RESULT IN RETALIATION, WHICH IT APPARENTLY DID, IN THE FORM OF TWO URINALYSIS TESTS, NEARLY BACK TO BACK. ALSO, AS FURTHER RETALIATION, GROTHER'S SUPERVISOR FRYAR WOULD NOT TRAIN GROTHER ON THE BUDGET DUTIES NEEDED TO BECOME FRYAR'S REPLACEMENT, WHEN FRYAR RETIRED FEBRUARY 2003. THE SEARCH FOR RECORDS, 1997 DEMOTION POLICY, INTERVIEWS OF DEMOTION PAY CUTS, ETC., HAS BEEN VERY FRUSTRATING WITH NUMEROUS DEADENDS AND MISDIRECTION.

21. GROTHER HAD BEEN ADVISED THAT THE NATIONAL RAILROAD ADJUSTMENT BOARD WAS THE VENUE FOR **INDIVIDUAL ARBITRATION**; BUT, THAT WAS INCORRECT FOR EMPLOYEES NOT PROTECTED BY AN AGREEMENT (EXH. 54) RESEARCH CREATED ADDITIONAL DELAY IN THIS SUBMISSION. ALSO, FINDING LEGAL COUNSEL, TAKES TIME.

IN SUMMARY, THE UPRR HAS NOT BEEN ADVERSELY AFFECTED BECAUSE OF ANY DELAY IN SUBMITTING THIS DISPUTE. THE DELAY IN SUBMITTING THIS DISPUTE WAS CAUSED BY

DOCUMENTED FEAR OF RETALIATION, ACTIONS OF PREJUDICE AND DISCRIMINATION ACTUALLY PERPETRATED BY UPRR AGAINST GROTHER AND OTHERS WHO DARED TO LITIGATE (I.E. 1996 FRANSCONI CASE WHERE UPRR DELAYED COBRA HEALTH INSURANCE FOR LITIGANTS WIFE), DELAYS IN GATHERING EVIDENCE DUE TO UPRR REPRESENTATIVES EFFORTS TO CREATE DEAD-ENDS, MISDIRECTION, SHREDDING KEY DOCUMENTS, ALLEGED DISINGENUOUS BEHAVIOR. MOREOVER, THE PERSONS WHO DEMOTED GROTHER ARE STILL EMPLOYED BY UPRR AND SHOULD BE READILY ABLE TO DOCUMENT THE DETAILED "JUSTIFICATION" WHY GROTHER'S "PERSONAL PERFORMANCE" SUDDENLY BECAME "NOT WHAT WAS NEEDED" AFTER:

A) PERSONAL PERFORMANCE BEING OUTSTANDING FOR 28 YRS.
B) TWENTY (20) MONTHS AS THE INCUMBENT ON THE JOB,
C) JUST (2) MONTHS AFTER BEING SELECTED AS UPRR'S SENIOR MANAGER TERMINAL OPERATIONS (SRMTO) AT TUCSON AS THE RESULT OF REVIEWING GROTHER'S RECORD OVER SIX MONTHS AND GROTHER'S PERSONAL PERFORMANCE FROM JAN. THROUGH APRIL 1997 (3.5 MONTHS OF DAILY REVIEWS OR POSSIBLY MORE, DEPENDING ON PACKARD'S ARRIVAL).

WHY WAS GROTHER DEMOTED TWO SALARY RATE GRADES ($1,272 PER MONTH); WHEN, NO OTHER UPRR MANAGER IN 1997 WAS REDUCED IN PAY DURING THE SYSTEM WIDE SERVICE FAILURES?

IN COMPARISON, DESPITE GROTHER'S BELOW FINANCIAL DENIGRATION FOR LIFE AS A DISPLACED EMPLOYEE, GROTHER HAS PERFORMED IN A STABLE AND PREDICTABLE PATTERN SINCE JULY 1, 1997:

- FINANCIALLY (DEMOTED GRADE 19 TO 17, OR BAND C TO B) AND ADVERSELY AFFECTED AS A "DISPLACED EMPLOYEE". GROTHER HAS BEEN DEPRIVED OF OVER $107,000 THOROUGH 6/1/03.

- UPRR AND RAILROAD RETIREMENT HAVE BEEN REDUCED FOR A LIFETIME FOR BOTH GROTHER AND HIS WIFE.

- CONSISTENTLY BEEN REJECTED IN HIS EFFORTS TO SEEK PROMOTION, OR EVEN, A LATERAL TRANSFER! GROTHER HAS DOCUMENTED A FEW OF HIS NUMEROUS APPLICATIONS (EXH. 31) ON CNET AND THE RECENTLY "IMPROVED INTERNAL UPRR CNET SYSTEM", WHICH ALL RESULTED IN ONLY ONE PHONE INTERVIEW.

GROTHER'S TREATMENT BY UPRR COMPARED TO OTHERS WHO WERE IN COMMAND ROLES -"COMPARATIVE JUSTICE":

COMPARING THE "DEMOTION DISCIPLINE" EXECUTED ON GROTHER BY UPRR, FOR JUST BEING IN THE WRONG PLACE WHEN SHOENER MADE A MERGER CONSOLIDATION EXPERIMENT, WITH "DISCIPLINE" ISSUED TO OTHERS IN "COMMAND ROLES". EVEN RECENT MILITARY COMMANDERS WHO WERE "IN COMMAND" WHEN ***LOSS OF LIVES OCCURRED BY ACCIDENTS, HAVE NOT BEEN FINANCIALLY AFFECTED LIKE GROTHER'S PENSIONS. GROTHER WAS NOT INVOLVED IN ANY LOSS LIFE ISSUES, CUSTOMER SETTLEMENTS, LAWSUITS.***

1. EXH. 39 INDICATE THE RESULT OF THE HIGH PROFILE NEWS CASE OF USS GREENEVILLE CMDR. SCOTT WADDLE WHO WAS "IN COMMAND" WHEN HIS SUBMARINE SURFACED AND ***KILLED NINE (9) JAPANESE SAILORS. THE NAVY SAID WADDLE WILL RECEIVE HIS PENSION AND FULL RETIREMENT PAY!***

2. EXH. 40 CONCERNS THE FATE OF COLONEL LARRY D. NEW'S, WHO WAS COMMANDER AT NELLIS AFB 57TH OPERATIONS GROUP WHEN TWELVE (12) ***AIRMEN WERE KILLED.*** HE WAS TEMPORARILY SIDELINED IN A STAFF JOB ACCOUNT MEDIA

SCRUTINY; BUT HE RECEIVED ***NO LOSS OF PAY OR RETIREMENT BENEFITS.*** IN FACT, "GENERAL (SELECT) NEWS" WAS APPROVED AUGUST, 2001 TO BECOME A GENERAL AND HE ASSUMED COMMAND OF THE 325TH FIGHTER WING AT TYNDALL AFB, FL ON JULY 12, 2002, TRAINING ACTIVE DUTY JET PILOTS.

3. EXH. 41, MR. STEVE CLARK, PRIOR ATTORNEY GENERAL OF ARKANSAS AND CANDIDATE FOR GOVERNOR OF ARKANSAS IN 1990 WAS FOUND GUILTY OF USING THE STATE'S CREDIT CARD, A FELONY CONVICTION. IN JUNE 2000, HE WAS GIVEN ***A SECOND CHANCE*** BY THE TEXAS BOARD OF LAW EXAMINERS, WHO ALLOWED HIM TO TAKE THE TEXAS BAR EXAM BECAUSE "***WE BELIEVE IN REHABILITATION IN TEXAS AND YOU LOOK LIKE YOU'VE HAD ENOUGH***"

PARTIAL LIST OF MORE UPRR POLICIES WHICH SUPPORT COMPENSATING GROTHER AS A DISPLACED EMPLOYEE:

1. THE BUSINESS CONDUCT POLICY OF UPRR, AS NOTED ON UP ONLINE JUNE 28, 2002 (AGAIN EXH. 42) STATES, IN PART, "IN THE CONDUCT OF BUSINESS, EACH EMPLOYEE MUST ADHERE TO HIGH ETHICAL STANDARDS. THESE INCLUDE HONESTY (I.E. ***TRUTHFUL DEALING WITH EVERYONE, INCLUDING...FELLOW EMPLOYEES) AND FAIRNESS (I.E. TREATING ANOTHER IN THE SAME MANNER AS YOU WOULD EXPECT TO BE TREATED.)***"

2. GROTHER IS HOPEFUL THAT THE BELOW COMPANY WIDE PUBLISHED STATEMENT BY PRESIDENT AND COO IKE J. EVANS IN THE LOTUS NOTE TO ALL EMPLOYEES DATED FEBRUARY 4, 2002, WILL ALLOW A FAIR AND IMPARTIAL REVIEW OF THIS DISPUTE ISSUE:

" INTERNALLY, ALL OF US MUST HEIGHTEN OUR EFFORTS TO 'WALK THE TALK'. TO ME, ***THIS MEANS MATCHING THE EVERYDAY BEHAVIOR WITH THE VISION AND VALUES OF THE COMPANY. THIS IS A PREREQUISITE TO US ADVANCING INTO THE HIGHEST RANKS OF U.S. BUSINESS.***"

FURTHERMORE, PRESIDENT IKE EVAN'S LOTUS NOTE JUNE 3, 2002 CONCERNING UPRR'S REPUTATION STATUS: "WE WANT TO ENHANCE THE REPUTATION OF THE UNION PACIFIC AND THE MEN AND WOMEN, LIKE YOU, WHO WORK HARD EVERY DAY TO MAKE US ONE OF THE BEST COMPANIES IN THE WORLD." GROTHER HAS WORKED HARD FOR 34 YEARS, (ESPECIALLY AS A 12 HOUR PLUS DAY OPERATING OFFICER) "BUILDING AMERICA" tm; BUT, HIS REPUTATION HAS BEEN RUINED BY THE TUCSON DEMOTION DISPLACEMENT. CAN THE REVIEWERS OF THIS DISPUTE AT LEAST RESTORE GROTHER'S COMPENSATION, AS GROTHER'S REPUTATION IS TARNISHED FOREVER?

3. EVEN IN TODAY'S 2003 UPRR CORPORATE CULTURE, IT IS STILL VERY DIFFICULT TO OBTAIN INFORMATION REGARDING WHY ONE HAS BEEN DISPLACED AND PIGEONHOLED. IT IS HOPED THAT THE "2002 UNION PACIFIC VALUES AND LEADERSHIP BEHAVIORS" (EXH 1), THE UPRR BALDRIDGE AWARD COMMITMENT, AND UPRR'S DESIRE TO ENHANCE ITS REPUTATION; ALL REVIEWED IN THEIR TOTALITY, WILL ALLOW UPRR TO FAIRLY ASSESS GROTHER'S LOSS AND PROVIDE REIMBURSEMENT TO "WALK-THE-TALK", AS DESCRIBED IN UPRR'S BUSINESS CONDUCT POLICY OR ETHICS AS SHOWN ON EXH. 42.

4. AS PART OF THE 2002 UPRR "BUILDING AMERICA" tm AD CAMPAIGN, THE GROTHERS RECEIVED A "IBM SIZED CARD" (EXH. 43) WITH GROTHER'S SEVERELY REDUCED PAYCHECK AT THEIR HOME STATING ON ONE SIDE

   "ITS TIME AMERICA HEARD YOUR STORY"

GROTHER WOULD PREFER TO SETTLE THIS MERGER RELATED TRANSACTION EXPERIMENT DEMOTION ISSUE WITHOUT BEING REQUIRED TO DETAIL THE GROTHER'S FINANCIAL AND EMOTIONAL DENIGRATION STORY TO THE NATIONAL MEDIATION BOARD NEUTRAL, AND SHOULD AN APPEAL BE NEEDED, TO THE SURFACE TRANSPORTATION BOARD.

WHOMEVER THE UPRR DECISION MAKERS ARE CONCERNING GROTHER'S ATTACHMENT 2 COMPENSATION DISPUTE CLAIM, PLEASE CONSIDER GROTHER'S FAIRNESS MANTRA:

HOW WOULD YOU WANT TO BE TREATED AS THE RESULT OF JUST BEING IN THE WRONG PLACE, AT THE WRONG TIME, WHEN A 1.5 MONTH MERGER TRANSACTION YARD CONSOLIDATION EXPERIMENT WAS ORDERED WITHOUT CAPACITY-RESOURCE PROCESS STUDIES AND M OF W CURFEWS ON EACH SIDE?

"WOULD YOU WANT A 21% OR $1,272 CUT IN WAGES, RETIREMENT AND A RUINED CAREER, FOR SOMEONE ELSE'S VICARIOUS MERGER EXPERIMENT DECISION?"(EXH. 42)?"

GROTHER HAS NOT LET THE ABOVE UNFAIRNESS AND TREATMENT AS A DISPLACED EMPLOYEE DESTROY HIS WILLINGNESS TO BE A "TEAM PLAYER". EXHIBIT 44 INDICATES GROTHER'S CONTINUING ABILITY AND WILLINGNESS TO ASSIST THE UPRR TO OBTAIN CRITICAL LEGISLATION.

MR. R.F. DAVIDSON IS QUOTED IN AN JULY 2, 2002 HOUSTON CHRONICLE ARTICLE DESCRIBING UPRR EXPENDITURES OF UNDER HALF A BILLION TO SETTLE THE 1997-8 MERGER RELATED SYSTEM-WIDE SERVICE FAILURE DEBACLES; INCLUDING CUSTOMER SETTLEMENTS AND LAWSUITS. IT WAS **DESCRIBED AS UPRR'S WORST PUBLIC DRUBBING, AND:**

"...THE PAIN FROM THE MERGER LASTED LONGER THAN ANYONE ANTICIPATED" (EXH. 45)

GROTHER'S FINANCIAL AND EMOTIONAL PAIN AS A DIRECT NEXUS TO A FAILED MERGER EXPERIMENT IS NOT OVER; AND, GROTHER'S PUBLIC AND PRIVATE DRUBBING CONTINUES!

IN SUMMARY, PURSUANT TO THE NEW YORK DOCK PROTECTIVE CONDITIONS, FINANCE DOCKET NO. 28250, APPENDIX III, ARTICLE IV, THIS IS OFFICIAL NOTICE THAT SHOULD THE PARTIES BE UNABLE TO SETTLE THIS DISPUTE

REGARDING GROTHER'S DISPLACED COMPENSATION AND FRINGE BENEFITS WITHIN THIRTY (30) DAYS, OR JUNE 16, 2003, SAID AVERAGE MONTHLY COMPENSATION AND FRINGE BENEFITS DISPUTE WILL BE REFERRED TO ARBITRATION.

ANY QUESTIONS, PLEASE CALL GROTHER AT 281-359-5667, AFTER 1500 CT, AS GROTHER IS STILL WORKING THE NIGHT SHIFT AFTER 34 YEARS OF LOYAL AND DEDICATED SERVICE.

SINCERELY,

JEG

JOHN GROTHER

ENCLOSURES:
ATTACHMENT TWO (pgs 1-4)
AND EXHIBITS 1-54

ATTACHMENT TWO – FINANCIAL LOSSES CREATED AS DIRECT RESULT OF GROTHER DEMOTION JULY 1, 1997 BECAUSE OF MERGER EXPERIMENT TO CONSOLIDATE

AVERAGE MONTHLY COMPENSATION LOSS:

MO. AVERAGE PAY FOR 12 MONTH PERIOD PRIOR 7/1/97 = $6,200

LESS: MO. PAY@ "TAKE IT OR LEAVE IT" HOUSTON JOB = $4,928

MONTHLY GROTHER LOSS IN COMPENSATION = $1,272

PERIOD OF TIME	PER MONTH	TIMES # OF MONTHS	HISTORICAL LOSS
7/1/97 – 6/30/98	$1, 272	12	$ 15, 264
7/1/98 – 6/30/99	1, 272	12	15,264
7/1/99 – 6/30/00	1,272	12	15,264
7/1/99 – 6/30/01	1,272	12	15,264
7/1/00 – 6/30/02	1,272	12	15,264
7/1/02 – 6/30/03	1,272	12	15,264

TOTAL DISPLACED EMPLOYEE BASE WAGE COMPENSATION LOSS THRU 6/30/03 $ 91,584.00

- THE ABOVE DATA ASSUMES NO SALARY INCREARES
- THEREFORE, IF ASSUME A 3.0% ANNUAL SALARY INCREASE
- APPLY SAID SALARY INCREASE TO THE ANNUAL/MONTHLY LOSS TIMES .030.
- (.030 x $15,264) = $458 X 6 YEARS = $ 2,748.00

BASE WAGE LOSS, PLUS EFFECT OF ASSUMED 3.0% ANNUAL SALARY INCREASES $ 94,332.00

(ABOVE SUB-TOTAL REPRESENTS SIX YEARS AS DISPLACED EMPLOYEE AND DOES NOT INCLUDE THE FRINGE BENEFITS NEXT UNDER).

THE ABOVE DOES ATTEMPT TO RECOGNIZE SOME NORMATIVE AMOUNT WHICH REPRESENTS THE GENERAL TYPE OF 3.0% SALARY INCREASES OVER THIS TIME FRAME. HAD I BEEN IN THE TUCSON OR OTHER "OPERATING DEPARTMENT JOB" (OPRNS), IT IS NOT UNCOMMON TO RECEIVE AN ANNUAL SALARY INCREASE OF 5-7% EACH YEAR AND GET A BONUS ON TOP OF THAT, WHICH THEN BECOMES A PART OF ONE'S FINAL RETIREMENT AND PENSION COMPENSATION CALCULATIONS.

I WAS ALSO DENIED THE ABILITY TO INCREASE MY SALARY SUBSTANTIALLY BECAUSE I REACHED THE SALARY CAP FOR MY DEMOTED SRG @ $61,140 WITHIN SIX MONTHS OF BEING ASSIGNED TO INTERMODAL. IN CONTRAST, MY PRIOR POSITION , THEN OCCUPIED BY **TOM S. PARR, WAS GIVEN AN IMMEDIATE INCREASE TO $6,318/MO.** EFFECTIVE 7/1/97. MOREOVER, PARR'S GRADE 19 SRG HAD A CAP OF $78,264; WHICH MEANS, MR. PARR WAS ABLE TO GET MORE INCREASES ON THE NEXT REVIEW; WHEREAS, MY SRG WAS CAPPED OUT, OR "AT THE TOP OF MY SALARY RANGE". IT WOULD BE VERY INTERESTING TO COMPARE THE PAY RAISES, BONUS'S, EXPENSE ACCOUNTS AND OTHER FRINGE BENEFITS (I.E PROMOTION OF PARR TO DTO @ WEST COLTON, RETIREMENT, ETC.) BETWEEN MIO GROTHER AND DTO PARR SINCE 7/1/97.

The requested amount of $107, 370 is greatly understated because:

- Wages/bonuses/expense accounts and other fringe benefits (starting 7/1/97) provided to my Tucson replacement, Mr. Thomas Parr, have and will greatly outpace my TO DATE AND pension earnings (See Parr's vs. Grother total compensation in the UPRR data bases)

- Includes no recognition of the emotional denigration and stress that both my wife and I have endured for almost six years. Includes assistance toward the restoration of my tarnished reputation, which is irreparable.

- Fact we will now need to move from Houston upon retirement.

- No compound interest or loss of use of money for 6 years is recognized.

NOTWITHSTANDING THE ABOVE, I AM WILLING TO ACCEPT THE $107, 370 (REDUCED BY APPROPRIATE TAXES) , TO RESOLVE UNFAIR TREATMENT FROM A MERGER YARD CONSOLIDATION EXPERIMENT ORDERED BY UPRR VPO.

LOSS OF FRINGE BENEFITS

DEPRIVED OF BENEFITS ATTACHED TO HIS PREVIOUS EMPLOMENT BY THE DEMOTION & TRANSFER TO HOUSTON

1. LOSS OF FREE TRANSPORTAION (I.E. COMPANY PROVIDED VEHICLE). AS A SPTCO. TERMINAL SUPERINTENDENT, ON DUTY AND ON CALL 24 HOURS PER DAY, THE SPTCO. APPROPRIATELY PROVIDED FREE TRANSPORTATION TO / FROM WORK AND TO ACCIDENTS, INCIDENTS, PERSONAL INJURIES ON A 24 / 7 / 365 DAYS PER YEAR BASIS. AFTER THE UP-SP MERGER, UPRR CONTINUED TO PROVIDE FREE TRANSPORTATION FOR "FIRST RESPONDERS" UNTIL 6/30/2000, WHEN MOST CARS WERE RECALLED (SOME STILL RECEIVE SOME TYPE OF VEHICLE REIMBURSEMENT; BUT, I HAVE NO ACCESS TO THAT INFORMATION TO DETERMINE ANY CONTINUING CLAIM:

(IF INFORMATION WERE MADE AVAILABLE ABOUT ANY CURRENT RE-IMBURSEMENT FOR THE BAND C, THEN THE BELOW LOSS SHOULD BE AMENDED ACCORDINGLY).

IN BOTH TUCSON AND HOUSTON, MY ONE WAY COMMUTE TO WORK WAS AND IS APPROXIMATELY 25 MILES ONE WAY. THEREFORE, TO COMPENSATE FOR MY PAST LOSS OF FREE TRANSPORTATION, I AM WILLING TO STIPULATE THAT THE "IRS RATE PER MILE" WILL BE PROVIDED AS "BACK COMPENSATION" BASED ON THE MINIMUM OF 50 MILES ROUNDTRIP PER DAY x 260 WORKING DAYS PER YEAR (I HAVE WORKED EVERY SATURDAY), LESS 25 VACATION DAYS OR 235 DAYS PER YEAR OF CAR USE:

PERIOD OF TIME	# OF DAYS	MILES PER DAY	IRS RATE	LOSS
7/1/97 – 6/30/98	235	50	$ .315	$ 3,701.25
7/1/98 - 6/30/99	235	50	$.325	$ 3,818.75
7/1//99 – 6/30/00	235	50	$.325	$ 3,818.75
LOSS OF FREE TRANSPORTATION COMPENSATION				$ 11,338.75

2. **LOSS OF MEDICAL FLEX CREDITS AS A FRINGE BENEFIT:**

FLEX CREDITS WERE BASED ON TOTAL COMPENSATION TO CALCULATE THE REDUCTION OF ONE'S MEDICAL COST. THEREFORE, AS YOUR COMPENSATION WENT DOWN, ONE WOULD HAVE FEWER FLEX CREDITS. BASED ON 1999 DATA, EACH FLEX CREDIT WAS ESTIMATED AT WORTH $26.61; THERFEFORE, A LOSS OF $573 IN FLEX CREDITS FOR A $ 15,264 REDUCTION IN ANNUAL WAGES:

YEAR	ANNUAL SALARY	FLEX CREDIT		EST CREDIT LOSS
1998	TO BE DETERMINED	TBD	*	550.00
1999	$ 62, 976	2, 367	**	573.62
2000	$ 62,184	TBD	*	575.00

ESTIMATED LOSS OF FLEX CREDIT USE TO OFSET MEDICAL COSTS , DENTAL & FLEXIBLE SPENDING = $ 1,698.62

- TO BE DETERMINED MEANS THAT ACTUAL VALUES NEED CORROBORATION FROM UPRR RECORDS, AS I HAVE MISPLACED THESE RECORDS; THEREFORE, AN ESTIMATED VALUE WAS UTILIZED FOR THIS INITIAL CALCULATION.
- FLEX CREDITS WERE DISCONTINUED IN 2001 AS "UNFAIR".

(** $62,976/2,367 CREDITS = $26.61 PER CREDIT OF VALUE. IF WAGES CUT $15,264/$26.61= 573.62 LOST FLEX CREDITS/YEAR.

EXCLUDING EXTREMELY ADVERSE AFFECT ON RETIREMENT BENEFIT CALCULATIONS, THE MINIMUM GRAND TOTAL WAGE AND FRINGE BENEFIT LOSS, WITHOUT INTEREST, FOR N.Y. DOCK DISPUTE THRU JUNE 30, 2003 IS = $ 107, 370

AMOUNT OF COMPENSATION REQUESTED = $ 107, 370

PLUS, MINIMUM PENSION LOSSES ARE ESTIMATED EXCEEDING TWO HUNDRED THOUSAND DOLLARS, SHOULD GROTHER'S LIVE TO BE 80 YEARS OLD! $ 200,000

MIN. EST. GRAND TOTAL OF ESTIMATED LOSS $ 310,000
(EXCLUDING TUCSON REAL ESTATE LOSSES)

9D

EXH. 7

PeopleSoft

Report ID: upc41000

Page No. 1
Run Date 12/04/2001
Run Time 07:12:04

EMPLOYEE JOB WORK HISTORY

Empl ID: 0050020
SSAN: [redacted]
NAME: Grother,John E

Exp Rtn Dt:
Serv Unit:

START/DT	TYPE CHG	STAT	TITLE	LOCATION	UNION	DEPT.	CO	JOBCD
08/16/01	NA Lat Lev	Act	Mgr Imdl O	Houston, Tx	N/A	Supt South	01	N75532
7/31/01	NABaseBen	Act	Mgr Imdl O	Houston, Tx	N/A	Supt South	01	N75532
1/01/01	NA Ttl Chg	Act	Mgr Imdl O	Houston, Tx	N/A	Supt South	01	N75532
03/01/01	NA-Merit	Act	Mgr Imdl O	Houston, Tx	N/A	Trns So Rg	01	N75532
03/01/00	NA-Merit	Act	Mgr Imdl O	Houston, Tx	N/A	Trns So Rg	01	N75532
1/01/99	NA-Merit	Act	Mgr Imdl O	Houston, Tx	N/A	Trns So Rg	01	N75532
1/01/98	NA-Merit	Act	Mgr Imdl O	Houston, Tx	N/A	Trns So Rg	01	N75532
7/01/97	NA Demote	Act	Mgr Imdl O	Houston, Tx	N/A	Trns So Rg	01	N75532
1/16/97	NA SP-UP	Act	Sr Mgr Ter	Tucson, Az	N/A	Trns Ws Rg	01	N72007
7/16/95	NA Pro Exc	Act	Terminal S	Tucson, Az	N/A	Sp History	70	N88884
1/01/95	NA-Promo	Act	Sr Mgr Bud	San Franci, Ca	N/A	Sp History	70	N88884
5/01/94	NA Ttl Chg	Act	Sr Mgr Bud	San Franci, Ca	N/A	Sp History	70	N88884
/01/92	NA Ttl Chg	Act	Mgr Joint	San Franci, Ca	N/A	Sp History	70	N88884
/01/89	NA-Merit	Act	Gen Mgr Am	San Franci, Ca	N/A	Sp History	70	N88884
1/01/88	NA Ttl Chg	Act	Gen Mgr Am	San Franci, Ca	N/A	Sp History	70	N88884
1/01/87	N/A Salary	Act	Asst Div S	Los Angele, Ca	N/A	Sp History	70	N88884
/01/86	N/A Salary	Act	Asst Div S	Los Angele, Ca	N/A	Sp History	70	N88884
/01/85	NA Ttl Chg	Act	Asst Div S	Los Angele, Ca	N/A	Sp History	70	N88884
5/01/85	N/A Salary	Act	Asst To Vp	San Franci, Ca	N/A	Sp History	70	N88884
'84	N/A Salary	Act	Asst To Vp	San Franci, Ca	N/A	Sp History	70	N88884
83	NA Ttl Chg	Act	Asst To Vp	San Franci, Ca	N/A	Sp History	70	N88884
/01/82	N/A Salary	Act	Terminal S	Avondale, La	N/A	Sp History	70	N88884
/01/81	N/A Salary	Act	Terminal S	Avondale, La	N/A	Sp History	70	N88884
01/80	N/A Salary	Act	Terminal S	Avondale, La	N/A	Sp History	70	N88884
01/80	NA Ttl Chg	Act	Terminal S	Avondale, La	N/A	Sp History	70	N88884
/01/79	N/A Salary	Act	Staff Asst	San Franci, Ca	N/A	Sp History	70	N88884
/01/79	N/A Salary	Act	Staff Asst	San Franci, Ca	N/A	Sp History	70	N88884
01/79	N/A Salary	Act	Staff Asst	San Franci, Ca	N/A	Sp History	70	N88884
01/78	NA Ttl Chg	Act	Staff Asst	San Franci, Ca	N/A	Sp History	70	N88884
/01/78	N/A Salary	Act	Service De	San Franci, Ca	N/A	Sp History	70	N88884
/01/77	N/A Salary	Act	Service De	San Franci, Ca	N/A	Sp History	70	N88884
01/77	N/A Salary	Act	Service De	San Franci, Ca	N/A	Sp History	70	N88884
01/76	N/A Salary	Act	Service De	San Franci, Ca	N/A	Sp History	70	N88884
01/76	NA Ttl Chg	Act	Service De	San Franci, Ca	N/A	Sp History	70	N88884
1/75	N/A Salary	Act	Planner	Los Angele, Ca	N/A	Sp History	70	N88884
1/75	NA Ttl Chg	Act	Planner	Los Angele, Ca	N/A	Sp History	70	N88884
01/74	N/A Salary	Act	Asst Term	West Coltn, Ca	N/A	Sp History	70	N88884
01/74	N/A Salary	Act	Asst Term	West Coltn, Ca	N/A	Sp History	70	N88884
1/74	NA Ttl Chg	Act	Asst Term	West Coltn, Ca	N/A	Sp History	70	N88884
1/73	N/A Salary	Act	Trainmaste	Long Beach, Ca	N/A	Sp History	70	N96008
01/73	NA Ttl Chg	Act	Trainmaste	Long Beach, Ca	N/A	Sp History	70	N96008
1/72	NA Ttl Chg	Act	Asst Train	Los Angele, Ca	N/A	Sp History	70	N88884
1/71	NA Ttl Chg	Act	Asst Train	West Coltn, Ca	N/A	Sp History	70	N88884
01/69	NA Nw Hire	Act	Management	San Franci, Ca	N/A	Sp History	70	N88884

End of Report

```
 OOOOOO   PPPPPPP   RRRRRR       JJ EEEEEE  GGGGGGG
OOOOOOOO PPPPPPPP RRRRRRR      JJ EEEEEE GGGGGGGG
OO    OO PP    PP RR    RR     JJ EE      GG
OO    OO PPPPPPPP RRRRRRR      JJ EEEEEE GG  GGGG
OO    OO PPPPPPP  RRRRRRR JJ   JJ EEEEEE GG  GGGG
OO    OO PP       RR RR   JJ   JJ EE      GG    GG
OOOOOOOO PP       RR  RR  JJJJJJ EEEEEE GGGGGGGG
 OOOOOO  PP       RR   RR  JJJJ  EEEEEE  GGGGGGG
```

JM: OPRJEG --SPTSVM02 DATE AND TIME 07/15/97 23:37:01
: OPRJEG --SPTSVM02 GROTHER, JOHN

OM: JOHN GROTHER, TERMINAL SUPERINTENDENT 629-2191/2120
BJECT: LETTER TO DAVIS

. J. E. DAVIS JULY 15, 1997
ESIDENT AND CEO

AR MR. DAVIS,

.ETTER CONCERNS MY JULY 1, 1997 DOWNGRADE (ON FOUR DAYS NOTICE)
OM SENIOR MANAGER TRAIN OPERATIONS AT TUCSON, AZ ($6,200/MO) TO
NAGER INTERMODAL OPERATIONS AT HOUSTON, TX ($4,920/MO), A 21%
GE REDUCTION AFTER 28 YEARS OF LOYAL AND DEDICATED SERVICE (SINCE
89, I RECEIVED ONE $60/MO RAISE IN SEP 1995 WHEN TRANSFERRED TO TUCSON).

IS WITH HEAVY HEART THAT I AM WRITING YOU IN AN ATTEMPT TO RECONCILE
W THE "UP VALUES SYSTEM" AND THE ISSUES OF DESCRIMINATION RELATE TO MY
DDEN DOWNGRADE. I HAD NO INDICATION OF PERSONAL UNSATISFACTORY PERFORMANCE
FOREHAND, ALTHOUGH THERE WAS TALK THAT THE PHOENIX REPLAN WAS NOT WORKING
; OTHERS HAD DESIGNED. IN FACT, ON JUNE 16, 1997, I RECEIVED A RECORDED
ICE MAIL FROM SUPERINTENDENT K.C. PACKARD "... THAT CONSIDERING THE
SOURCES THAT WE HAD AVAILABLE, THE ENTIRE SERVICE UNIT WAS DOING AN
.ANDING JOB ...". A FEW MONTHS BEFORE THAT, WE HAD ALL BEEN ELATED
EN IT WAS FORMALLY ANNOUNCED THAT WE HAD ALL BEEN SELECTED AFTER A
RGER SELECTION PROCESS TO BE PART OF THE "UP TEAM"

COURSE I UNDERSTOOD THAT TUCSON WAS UNDER EXTREME PRESSURE DUE TO THE
NTIAL CLOSURE OF PHOENIX YARD; BUT, THE RESOURCES I REQUESTED TO KEEP
CSON CURRENT WERE NOT PROVIDED. TO ILLUSTRATE, TUCSON WAS IN THE POSITION
NOT BEING ABLE TO ADD MORE SWITCH ENGINES OR CALL EXTRAS AS NEEDED UNTIL
NE 26, 1997, THE DAY THAT SIX AUGMENTORS WERE FINALLY ALLOWED ON THE TUCSON
RD AND THE DAY I WAS INFORMED OF MY DOWNGRADE (I HAD REQUESTED MORE
ITCHMEN IN WRITING FOR OVER A YEAR BEFORE THESE AUGMENTORS WERE ALLOWED).
ADDITION, ON THIS SAME DAY, I WAS REQUESTED TO SIGN A NOTICE THAT ALLOWED
SON TO MILL RUN TOGETHER CERTAIN TRAFFIC WHICH ELIMINATED SOME OF THE
LTIPLE HANDLING ON OUR 1X GRADE WITH A FOREMAN AND ONE SWITCHMAN. SEVERAL
ER CHANGES HAVE BEEN ALLOWED SINCE MY DOWNGRADE WHICH HAD BEEN PREVIOUSLY
QUESTED INCLUDING BUT NOT LIMITED TO OPERATING THE LAPXM DIRECTLY TO PHX
LIEU OF SWITCHING AT TUCSON, ADDITIONAL PERSONNEL AT PHOENIX, PICACHO
JCSON, BLOCKING CONSOLIDATIONS/CHANGES, IMPROVED COMMUNICATIONS IN
E 22ND STREET TOWER, ADDITIONAL LOCOMOTIVES IN SHUTTLE SERVICE BETWEEN
SON AND PHOENIX, ADDITIONAL TRACKAGE TO MAKE BLOCKS/HOLD INTERMODAL
UIPMENT AND SO FORTH.

CERNING THE SPECIFIC CRITICISM THAT ONE YARDMASTER DID NOT START HIS
BS IN A PROMPT FASHION ON TWO DIFFERENT OCCASIONS, THAT ACT IS DIRECTLY
ATED TO YARDMASTER DISSIBIO'S EFFORTS TO PERSUADE HIS SENIOR MANAGER
DIENCE TO RESTORE AN ADDITIONAL YDM POSITION IN THE TOWER, WHILE KEEPING
36TH ST YARDMASTER POSITION. IN LIEU OF CONSIDERING DISSIBIO'S ACTIONS
REPRESENTATIVE OF THE TERMINAL, DISSIBIO SHOULD HAVE BEEN HELD ACCOUNTABLE
THOSE WHO DIRECTLY OBSERVED HIS ACTIONS BASED ON PROGRESSIVE DISCIPLINE.

/E CONTINUED TO RECEIVE SOME PROFS INFORMATION ON CONTINUING CHANGES
THE PHOENIX REPLAN, SOME OF WHICH IS NOTED AS AN URGENT CHANGE ON THE
JECT LINE AND THEN SHOWN AS "DELIVERY PRIOITY: NORMAL AND DELIVERY REPORT

BASIC" CONCERNING A MULTITUDE OF PHX REPLAN CHANGES (ATTCH WAS NOT URGENT).

IS NOTHING "NORMAL OR BASIC" ABOUT THE IMPACT OF THE PHOENIX REPLAN MYSELF AND MY FAMILY; ESPECIALLY CONSIDERING THE PLAN WAS NOT MINE AND THE SENTIAL RESOURCES WERE NOT PROVIDED AS REQUESTED UNTIL MY DOWNGRADE.

TER MUCH REFLECTION, I WRITE THIS LETTER IN THE HOPE THAT I COULD POSSIBLY TAIN SOME TYPE OF MTO POSITION (IF NOT THE SENIOR MTO) IN THE ARIZONA AREA D WITHOUT THE 21% WAGE REDUCTION. IF ALLOWED, THIS PROPOSAL WOULD ALLOW THE TO UTILIZE MY EXPERIENCE IN ARIZONA, WITHOUT THE COST OF MANY RELOCATIONS. , IF NOT IN AZ, IN SOME SOUTHWESTERN LOCATION (MY WIFE HAS LUPUS AND ASCULAR NECROSIS), IN OPERATIONS WHERE A REDUCTION IN WAGES WOULD NOT A PART OF THE ASSIGNMENT.

'IRSE, I WILL CONTINUE TO PERFORM AS DIRECTED; BUT, I FELT THIS LETTER S NEEDED TO ADDRESS THE ISSUES PROPERLY; ESPECIALLY SINCE YOU HAVE BEEN SOCIATED WITH BOTH RAILROADS INVOLVED IN THIS MERGER.

SINCERELY,

JOHN E GROTHER
MIO - HOUSTON

HOME 520-575-5511

USTOMERS SIGN OUR PAYCHECKS"

```
 OOOOOO   PPPPPP  RRRRRR       JJ EE.  :E  GGGGGGG
OOOOOOOO PPPPPPPP RRRRRRR      JJ EEEEEE GGGGGGGG
OO    OO PP    PP RR    RR      JJ EE      GG
OO    OO PPPPPPPP RRRRRRR      JJ EEEEEE GG  GGGG
OO    OO PPPPPPP  RRRRRRR JJ   JJ EEEEEE GG  GGGG
OO    OO PP       RR RR   JJ   JJ EE      GG    GG
OOOOOOOO PP       RR  RR  JJJJJJ EEEEEE GGGGGGGG
 OOOOOO  PP       RR   RR  JJJJ  EEEEEE  GGGGGGG
```

OM: OPRJEG --SPTSVM02 DATE AND TIME 04/22/97 11:52:21
: OPRDSP --SPTSVM02 PAYAWAL, DAN OPRDLH --SPTSVM02 HAMPTON, D.
OPRPAL --SPTSVM02 LOBELLO, PAUL

JM: JOHN GROTHER, TERMINAL SUPERINTENDENT 629-2191/2120
: RESENDING NOTE OF 04/22/97 12:04
OM: DAVE J. BLAKE@UP (DJBLAKE @ NOTES)

MIKE J. GALLAGHER @ UP (MJGALLAG @ NOTES)
LAWSON MCDOWELL @ UP (LMCDOWEL @ NOTES),
JOHN E. GROTHER (OPRJEG @ SPTSVM02)
TE: 04-22-97 12:07:26 PM
BJECT: TUCSON BEER BLOCK - LATC - LATUM

(E, PLEASE UPDATE TAG TABLE AT LA TO PROVIDE A 281 (TUCSON) TAG FOR BEER
STINED TO TEMPE (27050)
IS WILL SUPPORT A PURE PHOENIX HEAD END BLOCK FOR TUCSON TO SETOVER TO TUPXF
N CLOSE CONNECTION
UIRES. THE TEMPE TRAFFIC MOVES ON A LATER CONNECTION AND CAN BE SWITCHED
T OF THE TUCSON SWITCH
TO MAKE THAT CONNECTION CONSISTENTLY.

LIVERY PRIORITY: NORMAL
LIVERY REPORT: BASIC

608 0 6 2223 07/15/97 U610 XB N078 VB99801

1. THIS HAS BEEN CHANGED SINCE TO DIRECT LAPXM TO PHX.

ILLUSTRATES "PRIORITY AND URGENCY" FOR WHICH I WAS DOWNGRADED

OTHERS PLANNED, I WAS SCAPEGOAT.

EXH 11

UNION PACIFIC RAILROAD COMPANY

JERRY DAVIS
PRESIDENT AND
CHIEF OPERATING OFFICER

1416 DODGE STREET
ROOM 1230
OMAHA, NEBRASKA 68179-1230

September 4, 1997

Mr. John Grother
Manager-Intermodal Operations
Union Pacific Railroad Company
6800 Kirkpatrick Boulevard
Houston, TX 77026-3995

Dear John:

Thank you for your letter of July 15 concerning your transfer from Tucson to Houston. I appreciate your feedback and understand the difficulties you may be experiencing as a result of your reassignment.

Brad King, Vice President-Transportation, tells me that there were many factors contributing to the problems at Tucson. In June, the service levels to our customers, both external and internal, deteriorated to the point where immediate action had to be taken. We believe that a change in management was necessary for improvement to occur.

While it is not always easy, changes in staffing are sometimes necessary as we look at our work force and strive to handle all the business that comes our way. I'm sure you can understand that Union Pacific must continually fine tune our operations so that we can be more efficient and responsive to customer needs.

Again, thank you for your letter and your continued commitment to our company.

Sincerely,

Jerry Davis

EXH. 13

, 1999

Some Crippling Chaos,
on Pacific Can See the Light
DANIEL MACHALABA
Reporter of THE WALL STREET JOURNAL

STON -- Some of the signs that Union Pacific Corp. is slowly making
ress have to do with speed, like the long plume of grayish smoke
ing almost horizontally from a locomotive as it barrels along here at
iles per hour.

would have been an uncommon sight around this hub in the troubled
d of 1997-98, when hardly anything moved fast enough to generate more
n fitful puffs. Union Pacific's merger with Southern Pacific Rail Corp.
melding two cultures, 53,000 employees, 7,000 locomotives, 155,000
ht cars and 36,000 miles of railroad routes covering the western
thirds of the U.S. -- had turned into a nightmare. Freight service had
lapsed, stranding Midwestern crops, snarling West Coast ports and
ying shipments of goods from chemicals to paper. A string of fatal
dents had the Federal Railroad Administration blaming a "fundamental
akdown" in safety.

...f addressing the mess fell to Richard Davidson, Union Pacific's
...rman and chief executive, who also was in charge during the railroad's
akdown. For more than a year he has been working to deliver on a promise
he would remake the nation's largest railroad, with new equipment,
nped management and a more open, flexible style. In the process, he has
n addressing the martinet within. For Mr. Davidson is a diehard railroad
who can still thrill to the throb of a powerful locomotive at the age of
ut who must shed an antiquated style of management that has roots in
days when hard-bitten ex-Civil War officers filled the executive ranks
ilroad companies.

...re sort of a gunslinger," Mr. Davidson says. "Sometimes you make the
ision and then analyze the problem." His managers use similar language to
ribe the old days of leading by fear. "When something happened, you
l out your gun and shot the guy in charge of the territory," says John
ensdorf, a vice president of the company's railroad subsidiary, Union
fic Railroad Co. "Now, you find out why it happened and make sure it
n't happen again."

GROTHER WAS "SHOT" FOR MERGER EXPERIMENT=YARD CONSOLIDATION

Functional Culture

...n inspectors from the Federal Railroad Administration descended on Union
ific's headquarters in Omaha, Neb., in 1997 following a series of fatal
ents on the railroad, they were surprised by the company's top-down,
culture, which seemed to discourage teamwork and communication.
...ulture was dysfunctional and characterized by noncommunication,"
Jolene Molitoris, head of the FRA in Washington. "They were separated
each other in a way that almost guaranteed problems."

EXH. 13 A

Linda D. Buttrill
12/23/2002 11:53 AM = ONE month FOR 1/6th OF DATA REQUESTED

To: John E. Grother MORE "DEAD-ENDS" = See 13C REQUEST
cc:

Subject: Re: PDR'S

John, this has really been a difficult time of the year - a mountain of reports due. But I have checked the data base and there is only one (1) PDR in the Southern Region system for you, that is January 2000 thru December 2000. I am sending it, via U.S.Mail, today. When the Intermodal group left the region, I no longer had access to their files. You might want to check with Fryar.

John E. Grother

John E. Grother
11/26/2002 01:19 AM

To: Linda D. Buttrill@UP
cc:

Subject: PDR'S

WOULD APPRECIATE COPIES OF MY PDR'S FOR THE LAST SIX (6) YEARS BEING MAILED TO MY HOME ADRRESS BELOW:

1718 RUSTIC PARK DRIVE
KINGWOOD, TX 77339

EXH. 13B

NO RESPONSE

USUAL DEADEND

John E. Grother
11/26/2002 01:14 AM

To: Don F. Fryar (DIRECT SUPERVISOR)
cc:

Subject: PDR'S

WOULD APPRECIATE COPIES OF MY PDR'S FOR PAST 5 YEARS BEING MAILED TO MY RESIDENCE WHILE I AM RECOVERING SUCH THAT I MAY REVIEW MY POSITIVES AND NEGATIVES.

Exh. 13 C

Union Pacific Railroad
Attn: Ms. Linda Buttrill
24125 Aldine-Westfield Road
Spring, TX. 77373

December 30, 2002

NO RESPONSE TO DATE

MORE DEADEND

Dear Ms. Buttrill,

This refers to attached copy of request for six (6) years of PDR reports.

I appreciate the Performance Development Report (PDR) which you sent for the year 2000 and your advice to contact Mr. Fryar. I did contact Mr. Fryar with a written lotus request dated 11/26/02; however, he choose not to respond this far and Mr. Fryar appears to be on 2002 vacation until the date of his retirement (Feb 1, 2003). Therefore, that suggestion is another dead-end.

Do you have anyway to obtain the missing PDR REPORTS from Premium Services for 2001 and 2002?

Moreover, do you have anyway to obtain the Service Unit PDR's for 1996 through 1999? I am especially interested in 1996-1997.

I have requested copies of these for each of the foregoing years; yet, Mr. Fryar choose not to provide them, just as Mr. Fryar has done this time.

Thanking you in advance for your cooperation. Please send the requested data to my home address.

John Grother JL

Attach: Grother lotus note 11/26/02
Buttrill lotus note 12/23/02

100

Exh. 23A

John E. Grother
07/31/02 02:39 AM

To: Lisa Brewster@UP
cc:
Subject: Re: Letter dated July 25, 2002

MY DIRECT SUPERVISOR WAS MR. KEN C. PACKARD, WHO STILL APPEARS TO BE AN ACTIVE EMPLOYEE AS NOTED ON COED. DO YOU THINK HE KNOWS WHERE THE 15121 IS FILED?

WOULD MR. PACKARD HAVE BEEN THE PERSON ACCOUNTABLE FOR FILLING OUT THE 15121?

WHY WOULD MR. PACKARD STILL HAVE THE 15121? WOULD IT NOT BE ON MICROFICHE OR HARD COPY?

HE HAS NOT RESPONDED TO MY TWO LOTUS NOTES ABOUT THIS ISSUE; BUT, HE MAY RESPOND TO YOURS.

NOTWITHSTANDING THE PROBLEM THAT THE CONTACTS YOU ARE TRYING TO REACH ARE ON VACATION, WHICH IS EXASPERATING AT BEST, PERHAPS WE CAN FOCUS ON FOUR SIMPLE QUESTIONS:

1. IS THERE A 15121 ON SOME HR HARD COPY FILE OR MICROFICHE? THERE MUST BE A PROCESS? I don't know. Our systems have changed at least twofold.

I HAVE REQUESTED & RECIEVED MY PERSONAL RECORD TWICE & THERE IS NOT ONE IOTA OF INFORMATION THEREIN ABOUT THE 1997 DEMOTION, OR ANY "DISCIPLINE" OR RATIONAL RELATED THERETO.

2. WAS JUSTIFICATION FOR A WAGE REDUCTION REQUESTED AND APPROVED? Yes, in the online system it indicates an electronic approval from Brad King and Art Schoener.

WHAT WAS THE BASIS FOR SUCH A HORRIFIC WAGE REDUCTION ($ 1,272/MO) ; WHEN ALL AROUND THE COUNTRY IN 1997, UPRR WAS BEING SUED BY SHIPPERS FOR SERVICE FAILURES; BUT, NO LAW SUITS IN MY TERRITORY? The online record indicates disciplinary action.

3. MAY I OBTAIN A COPY OF THE 15121? If the old system and the archive is brought up, yes. I don't have any idea of what it looked like in 1997.

4. WAS PERFORMANCE STATED AS THE REASON FOR MY DEMOTION OR "OTHER"? As I indicated above, the only note I can see in the online system was the demotion was for disciplinary reasons.

IF "OTHER", WHAT REASONS ARE NOTED IN THE "COMMENTS" SECTION OF THE 15121? Since we don't have a copy of the actual 15121, I don't know.

FORGIVE ME FOR ROLLING ON; BUT, PART OF MY TRANSITION IS TO WORK 1730-0530; 5-6 DAYS A WEEK AND SOMETIMES I GET A LIL' CONCERNED WHEN I RE-VISIT THE "FAIRNESS" OF THIS 1997 EVENT.

HOWEVER, SINCE I WILL BE FINANCIALLY PENALIZED FOR THE REST OF MY ENTIRE LIFE, I FEEL I AM ENTITLED TO SOME REASONABLE EXPLANATION AS TO WHY I HAVE BEEN SINGLED OUT AS SCAPEGOAT OF THE DECADE.

THANKING YOU IN ADVANCE FOR YOUR UNDERSTANDING OF THIS PAINFUL DEMOTION ISSUE.

Ex. H. 23B

To: John E. Grother@UP
cc:

Subject: Re: Letter dated July 25, 2002

Mr. Grother, I have not been able to find anyone who knows if the old system (15121) is archived anywhere. Therefore, I will not be able to do anything more on that front. I will forward you a copy of the form that is included in one of our more recent systems. That is all the luck I have had. The reference to disciplinary/performance is due to the policy statement in effect at that time, which I forwarded to you already.

Take care,
Lisa Brewster
John E. Grother

John E. Grother
08/01/02 09:19 PM

To: Lisa Brewster@UP
cc:
Subject: Re: Letter dated July 25, 2002

THANK YOU FOR THE TIME YOU HAVE DEDICATED TO THE FAIR REVIEW OF THIS ISSUE.

HOWEVER, I STILL WOULD APPRECIATE IT IF YOU WOULD REVIEW YOUR ANSWER IN RED TO #3 BELOW
WHERE YOU ANSWERED "YES" ; TO PROVIDING A COPY OF THE 15121 ("IF THE OLD SYSTEM AND ARCHIVE IS BROUGHT UP, YES") ; AND , PROVIDE ME WITH A COPY OF THAT 15121 DOCUMENT.

UPRR POLICY STATES EMPLOYEES SHALL BE TREATED WITH RESPECT AND FAIRNESS, "JUST LIKE YOU WOULD LIKE TO BE TREATED".

IF YOU CAN NOT ACTIVATE THE EQUIPMENT NECESSARY TO OBTAIN MY 15121, WHO, IS IN POSITION TO ACTIVATE SAID EQUIPMENT OR SYSTEM?

IN THE MEANTIME, IS IT POSSIBLE TO OBTAIN A COPY FROM THE "ON LINE RECORD" WHICH INDICATES DISCIPLINARY ACTION AND THE NAMES OF THE PARTIES WHO APPROVED THIS DEMOTION IN HARD COPY FORMAT TO MY HOME ADDRESS?

IN CONCLUSION, THEREFORE, I ONCE AGAIN AM REQUESTING THAT THE TRUTH FINALLY BE MADE AVAILABLE TO THE EMPLOYEE WOULD HAS BEEN SO ADVERSELY AFFECTED FOR THE REST OF THEIR LIFE.
Lisa Brewster

Lisa Brewster [redacted]

To: John E. Grother@UP
cc: Ken C. Packard@UP, Linda D. Buttrill@UP

Subject: ~~Re: Letter dated July 25, 2002~~

Please see my comments in red.
John E. Grother

See Prior Page Ex. H. 23A
- UNDERLINED AND/OR
- LOWER CASE STATEMENTS

EXH
24

[redacted]
Linda D. Buttrill
07/09/2002 03:34 PM

To: John E. Grother@UP
cc:

Subject: Re: REQUEST FOR MEETING

ANOTHER SLOW RESPONSE WITH DEADEND

John, As I have indicated on several occasions to you, I do not have a copy of this policy you are requesting. If you want to continue to pursue the 'demotion' and 'reduction in pay' from your 1997 assignment; maybe you should speak with someone in the EEO group. You can reach them at 402-271-4435, or 1-866-877-3362.
John E. Grother

WHY? EEO ISSUE?

John E. Grother
07/02/2002 03:55 AM

To: Linda D. Buttrill@UP
cc:

Subject: Re: REQUEST FOR MEETING

IT HAS BEEN OVER 100 DAYS SINCE I INITIALLY REQUESTED A COPY OF THE UNION PACIFIC 1997 DEMOTION POLICY AND THE IMPLEMENTING GUIDELINES, IF ANY.

ARE YOU NOW IN A POSITION TO PROVIDE SAID DOCUMENTS OR ADVISE ME TO WHOM I SHOULD BE ADDRESSING THIS REQUEST PLEASE?

---------- Forwarded by John E. Grother on 07/02/2002 03:52 AM ----------

John E. Grother
05/09/2002 04:51 AM

To: Linda D. Buttrill@UP
cc:

Subject: Re: REQUEST FOR MEETING

AS REQUESTED BELOW ON 3/27/02:

ARE YOU NOW ABLE TO PROVIDE THE "OFF-THE-SHELF FILED 1997 DEMOTION POLICY" OF THE UNION PACIFIC RAILROAD?

ALSO, ARE THERE ANY IMPLEMENTING GUIDELINES OR PROCEDURES THAT WENT WITH THE POLICY, THAT ARE ALSO AVAILABLE?

---------- Forwarded by John E. Grother on 05/09/2002 04:47 AM ----------

John E. Grother
03/27/2002 10:28 PM

To: Linda D. Buttrill@UP
cc:

Subject: Re: REQUEST FOR MEETING

CAM. 26 A

DEADEND

"DO NOT WASTE MY TIME TYPE OF RESPONSES"

Linda D. Buttrill

Linda D. Buttrill
03/10/2002 05:46 PM

To: John E. Grother@UP
cc:

Subject: Re: REQUEST FOR MEETING

Hello John . Yest you can make notes of what is in your personal record. Since the files are maintained in Omaha, far removed from the managers/supervisors that actually made 1997 decisions, I doubt that a rebuttal would be of much use at this time. However; if you are able to discuss with your supervisor at that time, they may be able to shed some light on the decision.

Linda D. Buttrill
03/07/2002 08:05 AM

To: John E. Grother@UP
cc:

Subject: Re: REQUEST FOR MEETING

Hi John. My suggestion was to review your Personal Record. A hard copy 'generally' has more information than is documented in the computer. The procedure for doing that is to have your present manager request the record and sit with you during the review. Records cannot be copied or taken out of the presence of your supervisor. Secondly, whoever you worked for in Tucson at the time of the change should have knowledge of why that decision was made. If neither of these suggestions produce the information you're looking for, I don't know where you would find it.

NOT TRUE (See 26 26)

Linda D. Buttrill
03/06/2002 09:28 AM

To: John E. Grother@UP
cc:

Subject: Re: REQUEST FOR MEETING

I would be happy to meet with your; however, I have no information that details your move from Sr. MTO to MIO. The only thing I have access to is the database information which associates this title change with the move from Tucson to Houston.

I suggest that your time would be better spent by either reviewing your Personal Record (with your supervisor) or talking to the manager/supervisor who recommended this change.

104

Exh 26

Wayne E. Huddleston
02/04/2002 03:13 PM

To: John E. Grother@UP
cc:

Subject: Re: REQUEST FOR COPY OF PERSONAL RECORD

John, we have sent you a copy of everything that is in your personal record file.

Is there something specific that you were looking for that wasn't in the file?

I have the file in my office and would be happy to review it with you if you want to. Please call me in Omaha at 271-3312.

I LEARNED OUT THERE IS "ANOTHER SECRET ONLINE RECORD

---------- Forwarded by Wayne E. Huddleston on 02/04/2002 03:07 PM ----------

Linda S. Jensen 02/04/2002 03:06 PM

To: Wayne E. Huddleston@UP
cc:

Subject: Re: REQUEST FOR COPY OF PERSONAL RECORD

---------- Forwarded by Linda S. Jensen on 02/04/2002 03:05 PM ----------

John E. Grother
02/04/2002 12:51 PM

To: Linda S. Jensen@UP
cc:

Subject: Re: REQUEST FOR COPY OF PERSONAL RECORD

HOW CAN I OBTAIN A COPY OF EVERTHING , INCLUDING WITHOUT LIMITATION BOTH POSTIVE AND NEGATIVE ISSUES, IN MY PERSONAL RECORD?

Linda S. Jensen

Linda S. Jensen 02/04/2002 09:13 AM

To: John E. Grother@UP
cc:

Subject: Re: REQUEST FOR COPY OF PERSONAL RECORD

The copy that was forwarded to you is the entire hard copy personal record that we have in Records

EXH. 26
C

Management.
I am forwarding a copy of your training history and exam history that is in Peoplesoft... There are no entries of discipline on your record in Peoplesoft...
John E. Grother

John E. Grother
02/03/2002 11:55 AM
* * * * * * * * * * * * * * * * *

To: Linda S. Jensen@UP
cc:

Subject: REQUEST FOR COPY OF PERSONAL RECORD

I APPRECIATE THE TWO DIFFERENT WAYS YOU USED TO PRINT THE WORK HISTORY. THAT WAS VERY CONSIDERATE OF YOU.

HOWEVER, I AM NOT CERTAIN THAT I HAVE MY ENTIRE PERSONAL RECORD.

SPECIFICALLY, I WOULD APPRECIATE A COPY OF ANY AND ALL POSITIVE (AWARDS, ACCOLADES,POSITIVE STATEMENTS, ETC.) AND NEGATIVE (DEMOTIONS, DISCIPLINE, LETTERS OF REPRIMAND, LETTERS OF UNSATISFACTORY PERFORMANCE, ETC) THAT ARE PRESENT IN MY PERSONAL RECORD.

I CAN BE REACHED AT 8-678-5303 SHOULD YOU HAVE ANY QUESTIONS.

THANKING YOU IN ADVANCE FOR YOUR COOPERATION.

---------- Forwarded by John E. Grother on 02/03/2002 11:50 AM ----------

Wayne E. Huddleston
12/03/2001 03:37 PM

To: Linda S. Jensen@UP
cc: John E. Grother@UP

Subject: REQUEST FOR COPY OF PERSONAL RECORD

Linda, would you please send John a copy of his personal record.

---------- Forwarded by Wayne E. Huddleston on 12/03/2001 03:35 PM ----------

Mitzy A. Graybeal 12/03/2001 09:49 AM

To: Wayne E. Huddleston@UP
cc:

Subject: REQUEST FOR COPY OF PERSONAL RECORD

For your handling. Thanks.

---------- Forwarded by Mitzy A. Graybeal on 12/03/2001 09:48 AM ----------

William J. Behrendt
12/03/2001 09:33 AM

29A

John E. Grother
08/27/2002 04:23 PM

INITIAL REQUEST

To: Lisa Brewster@UP
cc: (bcc: John E. Grother)

Subject: ON-LINE SYSTEM ACCESS

STILL TRYING TO GET A REPLY FROM MR. PACKARD; BUT, IN THE MEANTIME, MAY I PLEASE UNDERSTAND A LITTLE MORE ABOUT THE ON-LINE SYSTEM:

WHAT IS THE PURPOSE OF THIS ON-LINE SYSTEM?

WHO HAS ACCESS?

IS ACCESS RESTRICTED TO CERTAIN BAND LEVELS?

DOES MY CURRENT SUPERVISOR HAVE ACCESS? HOW?

DO I HAVE ACCESS? HOW?

DO BAND C OR D MANAGERS HAVE DIRECT ACCESS?

COULD ANY MANAGER LEVEL, OR JUST BAND LEVELS C & D REQUEST VERBALLY OR IN WRITING THAT SOMEONE IN HR PROVIDE THEM WITH A PRINT-OUT OF SAID ON-LINE DATA FOR A SELECTED PERSON ,OR IS THIS INFORMATION RESTRICTED IN ANY WAY BY BAND LEVEL OR OTHERWISE?

IF RESTRICTED INFORMATION, HOW IS ACCESS CONTROLLED?

PLEASE ADVISE.

THANKING YOU IN ADVANCE FOR YOUR COOPERATION.

John E. Grother
08/28/2002 01:31 PM

To: Lisa Brewster
cc:

Subject: Re: ON-LINE SYSTEM ACCESS

ANSWER MADE UNPRINTABLE BY "ICON OF SECRECY." COULD NOT BE FORWARDED OR COPIED.

WHY RESPOND IN MANNER THAT COULD NOT BE PRINTED?

Sent AT [8/28/2002 07:56 AM] (See Attached)

Message stated:

"MR. GROTHER - I AM LEAVING ON MATERNITY LEAVE IN FIVE DAYS. SO I APOLOGIZE FOR BEING SHORT WITH THIS E-MAIL. I HAVE INDICATED RESPONSES IN RED BELOW.

LISA BREWSTER"

ANSWER BLOCKED { } OR WRITTEN IN RED ON THE NEXT PAGE.

GH. 29C

John E. Grother
08/27/2002 04:23 PM

To: Lisa Brewster@UP
cc: (bcc: John E. Grother)

Subject: ON-LINE SYSTEM ACCESS

STILL TRYING TO GET A REPLY FROM MR. PACKARD; BUT, IN THE MEANTIME, MAY I PLEASE UNDERSTAND A LITTLE MORE ABOUT THE ON-LINE SYSTEM:

WHAT IS THE PURPOSE OF THIS ON-LINE SYSTEM?

WHO HAS ACCESS?

IS ACCESS RESTRICTED TO CERTAIN BAND LEVELS?

DOES MY CURRENT SUPERVISOR HAVE ACCESS? **HOW?**

DO I HAVE ACCESS? **HOW?**

DO BAND C OR D MANAGERS HAVE DIRECT ACCESS?

COULD ANY MANAGER LEVEL, OR JUST BAND LEVELS C & D REQUEST VERBALLY OR IN WRITING THAT SOMEONE IN HR PROVIDE THEM WITH A PRINT-OUT OF SAID ON-LINE DATA FOR A SELECTED PERSON ,OR IS THIS INFORMATION RESTRICTED IN ANY WAY BY BAND LEVEL OR OTHERWISE?

IF RESTRICTED INFORMATION, HOW IS ACCESS CONTROLLED?

PLEASE ADVISE.

THANKING YOU IN ADVANCE FOR YOUR COOPERATION.

EAH.
30

Pension Plan for Salaried Employees of
Union Pacific Corporation and Affiliates

Summary of Plan Changes
Effective January 1, 1999

The plan was amended to include several changes effective January 1, 1999. These changes may have little or no effect on your plan benefit. Alternatively, your benefit may grow at a slower rate in the future or not grow at all for a period of time. In some cases, your benefit may increase as a result of these changes. In no case will your benefit under the amended plan be less than the plan benefit you earned through December 31, 1998. The following summarizes the changes made to the plan.

Compensation

- The plan uses actual monthly base pay, plus overtime and certain paid incentives, to determine compensation. Beginning January 1, 1999, the plan will determine compensation using the base rate of pay in effect on the first day of each month, plus overtime and certain paid incentives.

- Pay from certain acquired companies (such as Chicago and North Western, Missouri Pacific, and Western Pacific) is currently included as plan compensation. Beginning January 1, 1999, the plan generally will not include any pay earned from an acquired company.

- Pay while in agreement service with a participating company is included as plan compensation if the agreement service is directly followed by five years of non-agreement employment. Beginning January 1, 1999, the plan will not include any pay for a period of agreement service (that is not covered by the plan).

- Compensation for part-time employees is adjusted by multiplying monthly pay by the following ratio: 190 divided by the hours worked during the month. Beginning January 1, 1999, the plan will determine compensation for part-time employees using actual monthly base pay, plus overtime and certain paid incentives, with no adjustment.

- For part-time employees, compensation during an unpaid absence is determined using the base pay rate in effect at the start of the absence if the employee returns to work after the absence, or if the absence is for a family or medical leave. Beginning January 1, 1999, no compensation will be credited during an unpaid absence for part-time employees.

EXHIBIT 31

C-NET JOBS APPLIED FOR AND UPRR RESPONSE (IF ANY)

JOB APPLIED FOR – DATE	CONFIRMATION REQUEST NUMBER	RESULTS/ REMARKS
1. Mgr. Terml Oprns (MTO)-Tucson (SRG 18)	28795266639l7 Applied 3/17/99 (Royce Hardin decision maker)	Resume was Recvd. C-Net said position filled 3/23/99 Position was one SRG below what I had worked for 22 months
2. Mgr. Yard Oprns. (MYO)-Tucson (SRG 17)	2914526663917 Applied 4/6/99 (Royce Hardin decision maker)	Resume was Recvd. No other response Position was two SRG's below what I had worked for 22 months.
3. Sr. Mgr. Terml. Oprns. (SMTO)-Tucson (SRG 19)	3047526663917 Applied 8/9/99 (Exh's 30A & 30B) (Royce Hardin)	Resume was Recvd. No interview as "NOT Qualified" Position Exact SAME as I had performed for 22 mo. @ Tucson.
4. Mgr. Intmdl Terml. Oprns (MITO)-Long Beach (Band C)	3301526663917 Applied 12/23/99 (Gary Davidson decision maker)	Resume was Recvd. No interview as "NOT Qualified" Position was Band C, at which level I had already performed. Position given to Marie Bedwell--est. age 38 & I was 53
5. Sr. Mgr. Terml. Oprns (SMTO)-Phoenix (Band C)	3293526663917 Applied 12/23/99 (Royce Hardin decision maker)	Resume was Recvd. No other response Position same as I worked in Tucson for 22 mo., except Phoenix.
6. Supt. Intmdl Oprns. (SIO)- Los Angeles (Band D)	3372526663917 Applied 1/28/00 (Greg Workman decision maker)	Resume was Recvd. No other response Position was a promotion of two Bands from Demoted Status.

7. Mgr. Terml. Oprns. Not Received No system response
(MTO)- Freeport, Tx Applied 6/6/00 (Dennis Tholen decision maker)
(Band C) (Charlie A. Bishop "personally lobbied my application", with no results, except "They don't want you. You are not young enough to handle an outside operating district"

8. Mgr. Terml. Oprns. 3648526663917 Resume was Recvd.
(MTO)-Tucson Applied 6/21/00 No other response
(Band C) (Royce Hardin decision maker)
(Position was one SRG below where I had performed for 22 months)
Position would have been a Promotion from my Demoted Status.

9. Mgr. Yard Oprns. 3725526663917 Resume was Recvd.
(MYO)-Tucson Applied 7/24/00 No other response
(Band B) (Royce Hardin decision maker)
(Position was one Band below that which I performed at Tucson for 22 months or two Salary Rate Grades). (Exh's 31A & 31B)
My selection would have been a lateral from my Demoted Status.

10. Mgr. Yard Oprns. Not received Received call from
(MYO)-Bloomington Applied 10/31/00 David Bader indicating
(Band B) Position was lateral transfer "unacceptability".
back to Train Operations.
(Unsure; but ,Dennis Tholen may have been actual decision maker)

11. Various Operating No calls – No feedback for about 2 years,
Positions on new C-NET (Since new system started)
System which is allegedly continuously
Searching for Operating Department Matches.

EXH. 32A

Page: 1 Document Name: untitled

Rs004R10

Thank You For Using the Union Pacific Job Posting System

JOHN, your resume has been received and is being considered along with other candidates who have applied for the OPER MGR YARD OPRNS (TUCSON) position in the OPER Department.

Your Confirmation Number is:
3725526663917

Number of lines in your Resume 199

>>> ENTER to Continue >>>

PF Keys

PF1-Help PF4-Close CNet

is Position is two SALARY RATE GRADES (RG 17 vs. 19) below the SR. MTO POSITION which I PERFORMED AT TUCSON (NOW BAND B vs. BAND C UNDER PRESENT SYSTEM) FOR 22 MONTHS.

I DID NOT RECEIVE A RESPONSE TO MY APPLICATION, FOR THIS "BELOW- LATERAL TRANSFER."

Date: 7/24/00 Time: 06:05:03 PM

EXH. 32B
SUBMITTED 7/24/99

Applications accepted from: 07/19/00 through 07/25/00

rofile ID Title

MGR YARD OPERATIONS Grade Band 8

LATERAL TRANSFER FROM CURRENT DEMOTED POSITION.

Department: TRANS - FIELD OPERATIONS JVN 3725
Location: TUCSON, AZ. Start Date: ASAP
Job Status: Full Time Vacancies: 1
Contact: ROYCE HARDIN Phone: 8-629-2120
Company: UPRR
Bus Group: OPER

Profile # 72017 - MGR YARD OPERATIONS

ic Purpose of Position:

cution of the daily transportation plan to achieve business
ectives and customer satisfaction within the terminal confines.

mary Accountabilities of the Position:

nage the safety process for terminal TE&Y employees
nage the terminal transportation plan to ensure that all quality
service business objectives are met or exceeded. Manage TE&Y
penses within assigned budgetary limits commensurate with volume
business
nd manage Supervisor Yard Operations and agreement employees
cution of transportation plan
ecute action plans to achieve cost of quality business objectives
rdinate and plan daily activities with centralized functional
eas
nitor work force levels to ensure all jobs are covered and execute
rrective action plans
ecute locomotive shut down policy
mmunicate (close the loop) company policies and directives to
minal employees

ired Experience:

d, Road Train Service (3-4 yrs.) Proficient
agement Trainee (1-2 yrs.) Proficient
dmaster/SYO (1-2 yrs.) Proficient
C (1 yr.) Working knowledge

ial Training, Skills, or Education:

ergraduate Degree
tten/Oral communication skills
S
S
puter skills (HOST/PC)
awareness

red Education Level: Bachelor Degree or equivalent

el Requirements: 0-25% travel may be required

7R03 - JVN 3725 07/18/00

EXH. 32A

age: 1 Document Name: untitled

Page 1 of 2 CNet Notice Rst4F1

09/22/99

Dear John:

Thank you for your application for the position of MGR TERMINAL OPERATIONS (TUCSON AZ).

I have reviewed all of the resumes for consideration and have assigned interviews to those individuals who possess a combination of experience, education, and skills which appropriately meet the requirements of this position. While I cannot extend an interview opportunity to you, your time and interest in applying for the position are appreciated. I encourage you to continue to seek developmental opportunities for which you are qualified ? ? within Union Pacific.

Sincerely,

Delete Notice ( ) (Y/N)

PF Keys

PF3-Exit PF4-Close CNet PF8-Next Page

ABOVE SHOULD HAVE BEEN THE FORM LETTER FOR "UNQUALIFIED" REGARDING ATTACHED POSITION WHICH MEANS THIS DOCUMENT SHOULD HAVE BEEN POSITION TITLED "SENIOR MGR. TERMINAL OPERATIONS; NOT MGR. TERMINAL OPERATIONS - TUCSON. THE POSITION OF SENIOR CLOSED 8/10/99 AND THIS WAS THE CLOSEOUT ONE MONTH LATER INDICATING POSITION WAS FILLED BY SOMEONE "more QUALIFIED"

UNION PACIFIC EXHIBIT 2
PAGE 107 OF 146

ate: 1/28/00 Time: 03:41:33 PM

THAN MYSELF WHO HAD WORKED THE

115

Exhibit #

C-11, 336

3047/5266397

SR MGR TERM OPRNS (TUCSON AZ)

lications accepted from: 08/04/99 through 08/10/99

'ile ID Title

7 SR MGR TERM OPRNS Grade Level 19

artment: TRANS - FIELD OPERATIONS JUN 3047
ation: TUCSON AZ Start Date: ASAP
Status: Full Time Vacancies: 1
tact: ROYCE IMARGIN Phone: 8-629-2120
pany: UPRR
Group: OPER

rofile # 72007 - SR MGR TERM OPRNS

Purpose of Position:

e the quality of the transportation product of the terminal meets
:eeds the standards set by the business objectives and customer
tations.

y Accountabilities of the Position:

e safe performance of all terminal T&E employees through
:oping, implementing and executing the safety process
e execution of the transportation plan for the terminals
.e that all quality of service objectives are met or exceeded
:g the terminal at or below annual transportation budget
terminal failure prevention activities are executed to
ve cost of quality business objectives
inate terminal activities with MOC, MCSC, adjoining Service
to meet business objectives
e terminal work force level to ensure transportation needs are
nd within budget
e the efficient use of locomotives and fuel to ensure that
ht car cycles are effectively managed while in the terminals
and develop both managers and agreement employees to the
(that their individual performance and employee involvement
ities determine successful accomplishment of company business
tives
nd to emergency situations or service interruptions

l Experience:

10 (2 yrs.) Working
2 yrs.) Working
2 yrs.) Working
1 yr.) Working
ilized function (1 yr.) Working

aining, Skills, or Education:

ment training program
ship seminars
raduate Degree)

UNION PACIFIC EXHIBIT 2
PAGE 108 OF 146

116

Exh. 46

Union Pacific Railroad
Ms. Janice Arthur (Via Certified Mail)
Director-Pensions
1700 Farnam Street
10th Floor North
Omaha, Ne 68102

August 25, 2002

Not Answered Yet!

Dear Ms. Arthur,

Thank you for your attachment 1 response of 8/14/02: however, I am still concerned about a logical "WHAT IF ISSUE", as I am trying to mathematically determine how badly my retirement was affected by my July 1, 1997 demotion.

Referring to attachment 2, STRICTLY ASSUMING that my higher compensation for 36 consecutive months before 1998 (namely, July 1994-June 1997) were used to calculate my Base Company Annuity (like prior to the merger "UP Employees"), in lieu of spreading the SPRC earnings over 5 years. Based on attachment 3 rough calculations, it appears that my Base Company Annuity would be approximately $ 1,959. That estimated number is about $ 230 per month greater than UP 2002 Benefit Statement of $ 1, 729 * or $ 55,292, assuming a 20 year life span after retirement at age 65. Correct? Am I also correct that my July 1, 1997 demotion has forever removed my higher earnings (July 1994-June 1997) from FAE consideration and my wife and I will be penalized for the remainder of our lives? By how much money?

Finally, is it correct that had I only maintained my $6,200 per month wage level that I initially started back on August 1, 1995 between January 1, 1999 until December 31, 2001, my estimated UP 2002 Benefit Statement would have been about $ 1,955 per month at age 65 (attachment 4)? *
(A $226 MONTHLY SHORTFALL FROM ESTIMATED $1729 AT 65, *)
I believe it would be relatively easy to enter the compensation figures I have estimated on attachs 3 and 4, or verifiable data (with bonus), from the Union Pacific compensation system into the standard pension computation model.

Please advise the results of these "WHAT IF" scenarios, as I am concerned about "**FAIRNESS**". Thanking you in advance for your cooperation.

Attachments @ 4
1718 Rustic Park Drive, Kingwood Tx 77339

Sincerely,
JEB

Ex. 48

UNION PACIFIC RAILROAD COMPANY

MAN RESOURCES
EPARTMENT

1416 DODGE STREET
OMAHA, NEBRASKA 68179

August 16, 2002

John Grother
1718 Rustic Park Drive
Kingwood, TX 77339

Dear Mr. Grother:

I am in receipt of your certified letter dated August 5, 2002. I can completely understand your frustration with the lack of detail that I have been able to find for you. Unfortunately, I do not have the knowledge of how things were handled systematically from a Human Resources standpoint in 1997. The systems that were used then have since merged with others which makes backtracking difficult.

Regarding the reasons behind your 'demotion', I would suggest that you speak directly with Mr. Ken Packard who you indicated was your supervisor at the time. If anyone can shed any detail on your situation, I would hope he could. I do know that Mr. Packard is still working with Union Pacific here in Omaha. As far as how the systems have recorded or detailed the situation, I don't believe more researching will necessarily give you what you are looking for, which is a detailed explanation as to why the demotion/salary decrease was given to you.

Again, I apologize for my lack of help in this matter. I hope that Mr. Packard will be able to give you what you are looking for.

Sincerely,

Lisa Brewster

Lisa Brewster

Exh. 49

VIA CERTIFIED MAIL

October 28, 2002

To: Mr. K.C. Packard
Director Transportation Services
1416 Dodge Street, CBSU #1
Omaha, Ne. 68179-0004

LAST OF SIX TRYS TO CONTACT. NO RESPONSE EVER SENT.

From: Mr. J.E. Grother

Subject: Discipline reason for 1997 Demotion of Grother

This is my sixth (6) attempt to contact you by E-mail or otherwise.

Sorry to bother you after over five (5) years; but I had a near death experience in February 2002 and I need the below questions answered before I can go to my grave.

You will recall that during late June 1997, I was advised by Mr. Tom F. Murphy and you, that I was reassigned to Houston Intermodal with a whooping 21% reduction in wages or $1,272 per month. When you and Mr. Murphy debriefed me separately in June 1997, no one stated why I was being demoted, except that Union Pacific Railroad (UPRR) wanted its own people in Tucson and UPRR wants Prior-UPRR persons running the Sunset Route. *

I realize that the Service Unit was unable to shift all the flat switching from Phoenix to Tucson, as that was a near doubling of volume, without any more trackage made available in May-June 1997. Moreover, even the UPRR capacity model personnel said, "this merger experiment will not work".

Also, you will painfully remember that we had Maintenance of Way (MofW) curfews on both sides of Tucson during that yard consolidation merger experiment. Tucson could only operate trains between 1900 and 0700, which is also the general time span when both the Eastbound and Westbound fleets of trains were converging on an overwhelmed Tucson.

We were not allowed any new hiring, augmenting or train blocking relief until one day after I was advised of my 1997 Demotion!

While all the above was going on, on my desk was sitting the Union Pacific Vision and Values "1997 Desktop Stand" which stated, in part, "our values" include: "***TREAT OTHERS AS YOU WOULD LIKE TO BE TREATED".***

Was anyone else reduced 21% or $1,271 per month, as a result of someone else's merger yard consolidation experiment?

What about all the thousands of cars delayed elsewhere (i.e. Houston, Gulf Coast, etc.). Was anyone at these locations and others cut two SRG's for those spectacular service failures, which lasted beyond 6-9 months?

Surely, you would agree, that no one in their right mind, would think losing 21% of their wages was "Fair Treatment"; especially when other, Prior-UPRR managers were not reduced in pay for long periods of horrendous service failures and lawsuits against UPRR?

I have a few basic questions, which I desperately need answered please:

Are you now able to advise me specifically, at this time, what I did at Tucson that was so HEINOUS, other than being an Ex-Southern Pacific manager, that I deserved being demoted two SRG's, which will require at least seven years from 1997 to just restore my September 1995 salary level?

Who made the decision to demote me and on what specific basis, evidence or charges?

Why was I not allowed to defend myself?

Why was I not allowed a "developmental action plan"?

Logic Tests:

If I had known in June-July 1997, that I was being demoted for alleged "disciplinary reasons", why would I have had the GALL to write then UPRR President Jerry Davis on July 15, 1997, asking for an appeal to save my wages, career and retirement?

More importantly, when President Davis responded after almost two months, why did his ghostwriter say nothing about me being demoted for alleged "disciplinary reasons"?

Finally, why was I never advised that "discipline reasons" had been placed on my record until July 31, 2002?

The reasons these questions are directed to you include; but, are not limited to:

1. I was advised by Linda Buttrill, of Houston HR, that these questions should be sent to my 1997 Tucson supervisor.

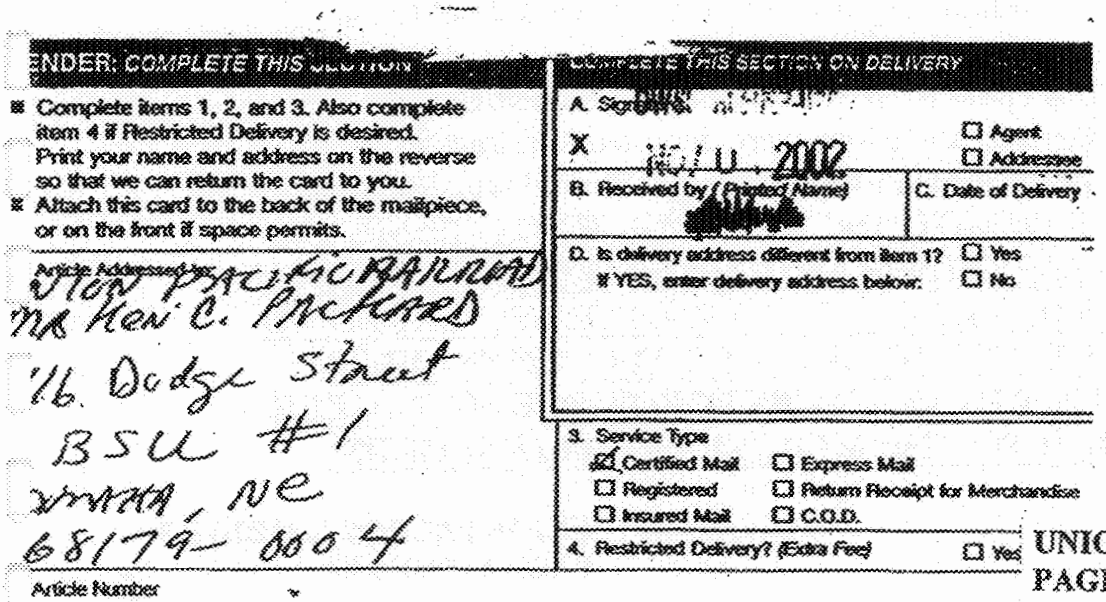
2. I was advised on July 31, 2002, that an on-line record exist with information in place regarding my 1997 demotion which states that it was a "disciplinary action" and I want to know NOW - "for what please".

It appears that over these last 5.5 years, every attempt I made to get promoted has been rejected, as I had this unknown-to-me "disciplinary action" entry in the on-line system which is a very quick way for hiring managers to reject someone for promotion consideration!

Please advise, such that I may clear my secret on-line record.

I can be reached at 678-5303 should you wish to discuss the above.

Thanking you in advance for your cooperation.


ENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
UNION PACIFIC RAILROAD
MR Ken C. Packard
16 Dodge Street
BSC #1
Omaha, NE
68179-0004

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X JUL 2002 Agent Addressee
B. Received by (Printed Name) C. Date of Delivery
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
Certified Mail Express Mail
Registered Return Receipt for Merchandise
Insured Mail C.O.D.
4. Restricted Delivery? (Extra Fee) Yes

Article Number

GLG

John Grother

UNION PACIFIC EXHIBIT 2
PAGE 136 OF 146

EXH. 53

Via CERTIFIED MAIL
Union Pacific Railroad
Human Relations Department
Attn: Ms. M. Uwakwe
1416 Dodge Street
Omaha, Ne 68179

January 28, 2003

Ms. M. Uwakwe,

Further the issues of "**FAIRNESS TO ALL EMPLOYEES" AND THE ACCOUNTABILITY OF MANAGERS FOR NOT FOLLOWING UNION PACIFIC RAILROAD'S (UPRR) PUBLICLY PUBLISHED "BUSINESS ETHICS", WHO DEMOTED ME 2 SRG'S DESPITE A 1997 DEMOTION POLICY THAT STATED "IN *MOST CASES, THE EMPLOYEE'S PRESENT SALARY LEVEL IS RETAINED" (EXH.1).***

Recommend that corroboration of total compensation fairness be obtained simply by requesting a few comparisons from the Compensation Dept.:

1. Compare what has been paid to Thomas Parr, my 1997 mentor-assisted, youthful replacement from 1997 to present in terms of monthly salary, bonus, expense accounts, annual increases, fringe benefits and retirement benefits to my pigeon-holed position.

   The difference is incredible, as I have been unfairly pigeon-holed in a dead-end job and probably will not even get back to my 1995 wage level of $6,200/month until 2005 of later (ten year penalty). If I had been allowed to keep my 1997 wage level, like others who were similarly situated, this huge differential in pay and retirement would not exist.

2. Compare what has been paid to Masseurs Charles O. Malone and Gregory "Bubba" Garrison since they were demoted and transferred in 1997 as a result of the "Railroad making changes to deal with backlogs" per Exhibit 2. THEIR DEMOTIONS WERE DUE TO **EXTREME SERVICE FAILURES, WHICH OCCURRED IRONICALLY IN THE SAME HOUSTON AREA THAT I WAS TRANSFERRED TO IN 1997, AS THE RESULT OF ALLEGED TUCSON SERVICE FAILURE; BUT, NO CUT IN WAGES FOR THOSE MANAGERS WHO WERE PRIOR TO THE MERGER UPRR MANAGERS!**

128

THEIR SERVICE FAILURE WAS AT LEAST FIFTY (50) TIMES GREATER THAN ANY "JUNE SERVICE FAILURE" WHICH OCCURRED AT TUCSON IN THE SUMMER OF 1997. THEIR "SERVICE FAILURE" RESULTED IN THE RAILROAD MAKING PERSONNEL CHANGES, JUST LIKE MY ALLEGED SERVICE FAILURE; YET NO ONE WAS CUT IN THEIR PAY! THE NEWSPAPER ARTICLE'S SUBTITLE REGARDING "RAILROAD MAKING MANAGEMENT CHANGES ..."; (EXH. 3) IS ALMOST EXACTLY WHAT PRESIDENT DAVIS SAID IN HIS SEPTEMBER 4, 1997 LETTER; BUT, THEY HAD NO PAY CUTS. THEIR SERVICE FAILURE HAD HUGE CUSTOMER SETTLEMENTS, EXTREME LAWSUITS AND ALMOST THE LOSS OF SOME MERGER TERRITORY TO OTHERS (STB ACTION) IN COMPARISON, I HAD NONE OF THE ABOVE!

You can see on Exhibit 2 that "Since summer (1997) UPRR has been struggling with an unprecedented traffic jam... has spread throughout much of its 36,000 mile system". Why was I the only one reduced in wages? The above system-wide service failures had demotions and transfers; but I was unfairly singled out to lose the wage level I had worked 28 plus years of loyal and dedicated service to obtain!

The last comparison, per my attorney-only 1997 Journal entry, Theodore (Ted) F. Ingram was demoted from a very high level in the UPRR Safety Department in Omaha to Tucson as an MTO on or about February 1997. This was approximately four (4) months before my demotion, after a failed merger yard consolidation experiment. Upon Ingram's arrival, Ingram stated that he had **"CONNECTIONS IN OMAHA"** and his very high Omaha monthly salary would be retained "as is", despite his lowered salary rate grades in Tucson. Why disparate treatment for similarly situated persons?

In comparison, I had "**no connections in Omaha"** as an Ex-SPTCO manager and I was financially denigrated for life!

DO ALL THE ABOVE APPEAR AS "FAIRNESS TO ALL EMPLOYEES" AND PROPER BUSINESS ETHICS TO HR?

Attaches: Exhibits 1-3

John Grother

Ex. L. 54

Arbitration
Frequently Asked Questions

1. **Q: What is the current daily pay rate for arbitrators working in the railroad industry?**
   A: $300.00 per day

2. **Q: Is there a separate roster for airline arbitrators?**
   A: The NMB has a single Roster of Arbitrators from which arbitrators can be selected for airline and railroad cases.

3. **Q: Can an individual railroad employee process a claim?**
   A: Yes, via the National Railroad Adjustment Board (NRAB) in Chicago.

Not for management

4. **Q: Can an award under the RLA be appealed?**
   A: Yes...to the U.S. District Court within 2 years from the date of the award.

Arbitration Menu

HOME | OFFICIALS & DIRECTORY | WHAT'S NEW | PUBLIC INFO | MEDIATION | REPRESENTATION
ARBITRATION | DOCUMENTS & FORMS | FOIA | COMMENTS & SUGGESTIONS
RELATED WEB SITES

EXH. 55

Butch Ethington
03/10/03 12:32 PM

To: John E. Grother@UP
cc: Mariette C. Uwakwe@UP
Subject: Re: REQUEST FOR 1997 POOR PERFORMANCE DETAILS

I spoke with Ken Packard, Dennis Tholen, and Tom Murphy about your demotion in 1997. The explanation was given that your performance was not what was needed. They made clear to me that the action was explained to you and you were given options. You chose to move and take a lower paying job. I am satisfied that the action was appropriate to the needs and practices at that time. The fact that others got treated differently is because they were in different jobs with different responsibilities and performance. You appealed to President Jerry Davis. Rene Orosco, the Ombudsman at that time, looked into your situation and responded appropriately at that time. He was closer to the situation, in time and information, than I am now. I believe that matter was settled, obviously not to your liking.

As for the reason for your lack of promotion in the interim, I believe the comment on the Form 15121 data base has nothing to do with that. Only by digging into the forms did that comment surface. I believe it has no bearing on your lack of interview success. I believe you should talk to the hiring managers about why you were not selected for various positions and get direct feedback.

You allege age and Viet Nam veteran status as a basis for discrimination in your treatment. That puts you case squarely in the hands of the EEO group.

Sincerely,
Butch Ethington
Ombudsman

John E. Grother

CORROBORATION OF "BEING DISPLACED"

John E. Grother
03/09/03 11:33 AM

To: Butch Ethington@UP
cc: Jill E. Augustyne@UP, Mariette C. Uwakwe@UP, Jill E. Thomsen@UP
Subject: Re: REQUEST FOR 1997 POOR PERFORMANCE DETAILS

See Next Two Pages for Questions Creating Above Response 3/9/03

Mr. Ethington,

I need a clarification please, as I am sensing a Catch-22 situation.

As you know, there were several issues in my 12/15/02 letter concerning the reasons why I was demoted. To illustrate:

1) I was orally advised June 26, 1997 (given days notice to transfer or resign after 28 years of dedicated and loyal service) by Messeurs Packard and Murphy that my demotion was basically because I was a former manager of Southern Pacific Manager and U.P. wanted its own people in Tucson and on the former Sunset Route of the SPTCo.

2) Next, I discovered on 7/31/02, after years of effort regarding why I could not get promoted, that "someone had secretly placed on my Online Personal Record the statement that I was demoted 7/1/97 for "DISCIPLINARY REASONS".

VIA CERTIFIED MAIL

National Mediation Board (NMB)
Attn: Mr. Roland Watkins
Washington, D.C. 20572

June 16, 2003

LAW DEPT.
JUN 20 2003
REC'D UPRR

Dear Mr. Roland Watkins,

I have been advised that your Office is the contact point for individuals applying for NMB Arbitration. Pursuant to the attached excerpt from the New York Dock (NYD) Article IV, and oral information from your Office, this letter is to request the assignment of an Arbitration Committee.

In accordance with Article IV, I have provided Union Pacific Railroad ("UPRR") a thirty (30) day notice (attached in part) to resolve this dispute ("Dispute"), concerning myself being defined as a Displaced Employee (Non-Agreement person). The issue involves UPRR's failed Merger Transaction related yard consolidation experiment to operate ALL the switching for Phoenix from Tucson, Arizona in late May 1997, which resulted in my demotion and reduction in wages of $1,272 per month and other fringe benefits effective 7/1/97. UPRR has not responded to my certified letter dated 5/12/03, attached in part, requesting Dispute resolution.

I am hereby requesting Neutral selection data, including biographies, for referees, who would be available for the states of Arizona, Texas, California and Washington D.C. please. I am uncertain if witnesses are able to testify; but, Tucson Arizona would be an appropriate site for an Arbitration, if ALL those employees present in 1997 are allowed to testify in person.

NMB-2 appears to apply to Mediation; so, not prepared. Please advise immediately what may additionally be required to activate the entire NMB Arbitration process, including any deposits or pre-payments required. I would appreciate a return call to discuss the entire NMB Arbitration Process to 281-359-5667 between 1300-1800 CT please (night worker).

By copy to UPRR, this is Official Notice to UPRR of my intent to refer said Dispute to an Arbitration Committee, as no UPRR response to attached certified letter.

Attachments:
NYD Conditions
Certified ltr. to UPRR

Sincerely,

JEG

John Grother

cc: UPRR 085-RM 830

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

Marilyn J. Abart
Director Protection Management
(402) 997-2014

July 18, 2003

Mr. J. E. Grother
1718 Rustic Park Dr.
Kingwood TX 77339

Dear Mr. Grother:

This is in reference to your May 12, 2003 letter to Mr. James V. Dolan in which you requested to be certified for New York Dock protective benefits as a result of the merger between the Union Pacific and Southern Pacific Railroads. As this is a protection issue, it has been referred to my office for handling. All future New York Dock related correspondence between you and Union Pacific Railroad should also be directed to me.

I have reviewed your claim and have determined that you do not meet the required criteria to qualify as a displaced employee under the provisions of New York Dock. In order to be certified for coverage, an employee must prove that any adverse affect was as a direct result of the merger transaction. As you stated in your letter, when the merger was implemented, you remained on a management level position. All records indicate your subsequent demotion was based on performance standards, not as a result of the merger.

In addition, to be considered for coverage an individual must satisfy the term of "employee" as it is defined in the Railway Labor Act and by New York Dock cases. As Arbitrator Seidenberg wrote (in relevant part) in his 1987 case of The Matter of Arbitration Between B. J. Maeser et.al and Union Pacific RR Co. et al.:

> "A review of the history of labor protection conditions compels us to hold that the term "employee" was not intended to be applied in a generic sense, i.e., all persons employed by the railroad, but rather the term as it has been hammered out on the anvil of railroad labor legislation, rulings of the ICC, court decisions, arbitral awards, to mean only those employees and subordinate officials who are subject to unionization, or who perform duties that generally are described as **being other than administrative, managerial, professional, or supervisory in nature.**" (emphasis added).

Clearly, the position you held at the time of the merger implementation was managerial in nature. Any individual assigned to such a position does not meet the definition of employee under the Railway Labor Act and New York Dock cases.

UNION PACIFIC EXHIBIT 5
PAGE 1OF 2

Finally, even though the New York Dock conditions do not have strict time limits for filing time claims, an unreasonable time has expired between the implementation of the merger and your first claim for protective coverage. Considerable arbitral authority has held that the doctrine of laches does apply in cases such as this.

Your claim for coverage as a displaced employee under the New York Dock labor protective conditions is respectfully declined.

Sincerely,

Marilyn J. Ahart

cc: Mr. Roland Watkins
Mr. J. V. Dolan

UNION PACIFIC EXHIBIT 5
PAGE 2 OF 2

Union Pacific Railroad
Attn: Ms. Marilyn J. Ahart
Director Protection Management-Law Dept.
1416 Dodge Street
Omaha, Ne. 68179

July 28, 2003

Dear Ms. Ahart,

Reference your letter of July 18, 2003, I would like to again suggest that the parties seek a fair settlement, without the time and expense of Arbitration.

I was displaced by a failed Merger Transaction yard consolidation experiment (nexus), which was ordered by Union Pacific Railroad (UPRR) Executives in early 1997, who were unfamiliar with Arizona operating conditions, and attempted to more than double the switching volume into Tucson Yard by moving ALL East and West traffic to and from Phoenix to Tucson, without the benefit of a yard capacity analysis. I have twenty boxes of organized material, thrown out as trash, which corroborate reality in 1997. Moreover, my Attorney and I have found some other cases which indicate opines other than the Maeser case. Finally, there is no strict time limit for filing arbitration and I have several good and substantial reasons why I could not come forward before; including, but not limited to the failure of President Davis to address issues of discrimination and UPRR Value failures in my 7/15/97 appeal letter (Exh. 10 in letter to Dolan 5/13/02), threats of retaliation, documented retaliation (i.e placing untrue nefarious statements on the secret to me Online PR system), and the 1996 Fransconi case wherein UPRR management intentionally delayed a terminated managers Cobra medical insurance coverage as retaliation, which endangered his spouse.

I addressed some of the above issues to the UPRR Ombudsmen on 12/15/02, in an appeal based primarily on the publicly published Official Website Policy of UPRR stating that ALL UPRR employees have a fundamental right to fair treatment. Concerning the alleged facts by the Ombudsman that "…your performance was not what was needed", two prior-to-the-Merger managers of UPRR (Malone and Garrison were "not what was needed" in Houston during 1997); yet, they and many others were not reduced in pay when displaced by Merger Service Failures (Exh. 1). In comparison to Tucson, Houston was such a monstrous service failure that it created huge settlements and law suits by customers and was almost the casual reason for the STB continuing emergency service orders and potential Merger

concessions. The Ombudsman, whose job it is to see that employees do not fall through the organizational cracks, found that it was appropriate for his 1997 successor to ignore my statements about discrimination, failures of the UPRR Values, and reduce my salary, while all other service failure persons were uncut. The Ombudsman responded, after years of my dead-end questioning that "The fact that you were treated differently is because they were in different jobs with different responsibilities and performance (Exh. 2). This type of lack of fair treatment reply is opposite the strict definitions of the UPRR Values, UPRR Business Ethics and issues of discrimination.

On my desk 6/26/97, when I was given four days notice to take a draconian $1,272 per month demotion of two SRG's or quit after 28 years of railroad service (same date said Merger yard consolidation experiment announced as a failure), was the 1997 UPRR Values cardboard desktop reminder statement (Exh. 3) indicating, in part, "Treat others like you want to be treated", "Trust is essential" & "Try new ideas…encourage change". What happened to me?

It is clear to me that there is a dramatic and consistent contrast between the publicly published Policies of UPRR and the actions of UPRR. Therefore, if the parties can not reach a settlement, I regrettably plan to do the following:

1. Continue the Arbitration process.
2. Appeal to the STB, if needed, based on a Lace Curtain exception.
3. After retirement: a) speak and write my true story regarding "Building America" to every entity, including ALL newspapers, magazines, Malcom Baldridge Committee, award committees, Legislators, etc., and b) Re-activate the Unionization of managers, starting with UPRR.

Since an at-will employee does not appear to be entitled to the UPRR fundamental right fair treatment, despite a clear written policy, as are those who have representation; or, were pre-merger managers of UPRR, perhaps, the Teamsters are eager for a million members or a newly designated Union?

Should you wish to discuss the above, I can be reached at 281-359-5667 after 2:00 P.M. CT., as I relegated to night duty as continuing retaliation.

Exh. 1- 1997 Service Failures
Exh. 2-Ombudsman 3/10/03
Exh. 3-1997 Values

Sincerely,

John Grother

UNION PACIFIC RAILROAD COMPANY

Marilyn J. Ahart
Director Protection Management
(402) 997-3014

1416 DODGE STREET
OMAHA, NEBRASKA 68179

August 15, 2003

Mr. J. E. Grother
1718 Rustic Park Dr.
Kingwood TX 77339

Dear Mr. Grother:

This is in reference to your July 23, 2003 letter regarding your earlier request for arbitration pursuant to the New York Dock labor protective conditions.

For the reasons identified in my July 18, 2003 letter you do not meet the required criteria to qualify as a displaced employee under the provisions of New York Dock. Since you have requested the National Mediation Board (NMB) to assign arbitration pursuant to Article IV of the New York Dock labor protective conditions, we should proceed with that process.

As the NMB has now provided a panel of seven potential arbitrators, please contact me to complete the process of selecting the neutral member for this case.

Sincerely,

Marilyn J. Ahart

UNION PACIFIC EXHIBIT 11
PAGE 1 OF 1

VIA CERTIFIED MAIL

June 16, 2003

National Mediation Board (NMB)
Attn: Mr. Roland Watkins
Washington, D.C. 20572

LAW DEPT.
JUN 20 2003
RECD UPRR

Dear Mr. Roland Watkins,

I have been advised that your Office is the contact point for individuals applying for NMB Arbitration. Pursuant to the attached excerpt from the New York Dock (NYD) Article IV, and oral information from your Office, this letter is to request the assignment of an Arbitration Committee.

In accordance with Article IV, I have provided Union Pacific Railroad ("UPRR") a thirty (30) day notice (attached in part) to resolve this dispute ("Dispute"), concerning myself being defined as a Displaced Employee (Non-Agreement person). The issue involves UPRR's failed Merger Transaction related yard consolidation experiment to operate ALL the switching for Phoenix from Tucson, Arizona in late May 1997, which resulted in my demotion and reduction in wages of $1,272 per month and other fringe benefits effective 7/1/97. UPRR has not responded to my certified letter dated 5/12/03, attached in part, requesting Dispute resolution.

I am hereby requesting Neutral selection data, including biographies, for referees, who would be available for the states of Arizona, Texas, California and Washington D.C. please. I am uncertain if witnesses are able to testify; but, Tucson Arizona would be an appropriate site for an Arbitration, if ALL those employees present in 1997 are allowed to testify in person.

NMB-2 appears to apply to Mediation; so, not prepared. Please advise immediately what may additionally be required to activate the entire NMB Arbitration process, including any deposits or pre-payments required. I would appreciate a return call to discuss the entire NMB Arbitration Process to 281-359-5667 between 1300-1800 CT please (night worker).

By copy to UPRR, this is Official Notice to UPRR of my intent to refer said Dispute to an Arbitration Committee, as no UPRR response to attached certified letter.

Attachments:
NYD Conditions
Certified ltr. to UPRR

Sincerely,

JEG

John Grother

cc: UPRR 0855-RM 830

UNION PACIFIC RAILROAD COMPANY

W. E. LOOMIS, GENERAL DIRECTOR
EMPLOYEE RELATIONS PLANNING
1416 DODGE STREET - ROOM 332
OMAHA, NE 68179
(402) 271-5446
FAX (402) 233-2499

September 30, 2003

Mr. Roland Watkins
National Mediation Board
Washington, DC 20572

Dear Mr. Watkins:

This refers to John E. Grother's June 16, 2003 letter to you concerning neutral selection data in connection with his request for arbitration, in accordance with Article IV of the New York Dock labor protection conditions, to resolve a dispute with Union Pacific Railroad. I have been assigned to handle this arbitration for Union Pacific. Mr. Grother's August 11, 2003 letter to you advised he has retained the services of Attorney Gordon P. MacDougall for the pending arbitration issue.

Your letter of August 11, 2003 to John E. Grother, with copy to Marilyn Ahart at Union Pacific, enclosed a panel of seven neutrals and requested the parties notify your office "...as soon as a selection has been made." This is to advise Ms. Ahart and I have had three telephone conversations with Mr. MacDougall for the purpose of selecting a neutral from your panel by means of alternate strikes. Mr. MacDougall is unwilling to use the alternate strike method to reduce the panel to a single neutral.

During our telephone conversation today, Mr. MacDougall said he has talked with you on this matter. He alleges you said the neutral selection process for New York Dock arbitration set forth in your April 28, 2000 memorandum is not applicable to cases stemming from Article IV of New York Dock, where the individual is not represented by a labor organization. Is that correct and, if so, what process is applicable?

Sincerely,

W. E. Loomis

cc: John E. Grother
1718 Rustic Park Drive
Kingwood, TX 77339

Gordon P. MacDougall
Suite 410
1025 Connecticut Ave. NW
Washington, DC 20036

LAW OFFICES
GORDON P. MACDOUGALL
1025 CONNECTICUT AVE., N. W.
WASHINGTON, D. C. 20036

TELEPHONE
AREA CODE 202
223-0726

October 6, 2003

REC'D
OCT - 7 2003
Labor Relations

Mr. Roland Watkins
National Mediation Board
1301 K St., NW-#250E
Washington DC 20572

BY HAND

Re: NYD Claimant-John E. Grother

Dear Mr. Watkins:

I am in receipt of a letter from Mr. W.E. Loomis (UP-Employee Relations Planning), dated September 30, regarding selection of a neutral in the entitled matter. I have a somewhat different version of the events to date.

1. We have conducted three telephone discussions, 9/24, 9/26, and 9/30, during which a number of matters were discussed, such as likely issues, procedures, location, and possible terms for an arbitration agreement. I believe these discussions, for the most part, ve been helpful. However, during the 9/26 discussion, Mr. Loomis eferred to your August 11, 2002 letter, addressed to Mr. Grother:

> "I am enclosing a panel of seven (7) neutrals. Please notify this office as soon as a select-ion has been made for our records."

Mr. Loomis maintained that the alternate striking process is mand-atory in selecting a neutral, in accordance with your April 28, 2000 memorandum, attached, which he forwarded to me following our telephone conference. I agreed, at his suggestion, to inquire whether this is your understanding of the two sentences quoted above from your August 11 letter to Mr. Grother--that selection means alternate striking.

2. I advised Mr. Loomis during our brief 9/30 conversation that my understanding is the April 28, 2000 memorandum is mandatory only as to the persons addressed, i.e., railroad carriers and rail labor organizations and, as such, alternate striking is not mandatory here, where the controversy does not involve a rail labor organization party.

3. Mr. Loomis asserts I am unwilling to use the alternate strike method to reduce the panel to a single neutral, but he does not mention my other suggestions, apparently in the belief the alternate strike scheme is binding. However, it is possible the discussions may prove more fruitful if the April 28, 2000 memorandum was not intended, d does not apply, to non-labor situations.

Very truly yours,

UNION PACIFIC EXHIBIT 12
PAGE 11 OF 19

34

Gordon P. MacDougall

Atty. for John E. Grother

cc: W.E. Loomis
Union Pacific RR Co.
1416 Dodge St.-Rm. 332
Omaha, NE 68179

(By overnight express)

John E. Grother
1718 Rustic Park Drive
Kingwood TX 77339

135

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

(202) 692-5000

RECD
MAY 05 2000
Labor Relations

MEMORANDUM

To: Railroad Carriers
Rail Labor Organizations

From: Roland Watkins
Director Arbitration Services

Subject: New York Dock Arbitration - Neutral Selection

Date: April 28, 2000

A number of months ago, the National Mediation Board (Board) began experimenting with a new procedure for providing the parties with balanced panels in New York Dock cases. Since many of you may not have been involved with New York Dock cases recently, pleased be advised that the following procedures will apply governing the selection of a neutral to resolve disputes in accordance with the provisions of Sections 4 and 11 of the New York Dock Protective Conditions:

- Upon receipt of a request from a party for a neutral, the Board will furnish the parties to the dispute with a list of approximately thirty (30) qualified neutrals. Each party will be requested to provide a list of fifteen (15) preferred neutrals from that list. **This information is confidential and will be used only for the purpose of the selection of a neutral for that dispute.**

- The lists, along with other relevant information, will be considered by the Board in compiling a panel of seven (7) neutrals. The Board will then promptly provide the parties with such a panel. The parties will use the strike method to derive at a neutral and will immediately inform the Board of the selection.

These procedures will not prevent the parties from mutually deciding on a neutral, but will apply only when the parties are unable to agree on a neutral.

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

(202) 692-5000

CORRECTED COPY

October 6, 2003

Mr. W. E. Loomis
General Director
Employee Relations Planning
Union Pacific Railroad Company
1416 Dodge Street, Room 322
Omaha, NE 68179

Dear Mr. Loomis:

I received your letter concerning a recent conversation with Mr. Gordon MacDougall, counsel for John Gother. I did not offer any opinion as to the applicability of New York Dock. As you and Mr. MacDougall are aware, I merely furnished a list pursuant to a request initiated by Mr. Gother. With this letter, I am requesting of you and Mr. MacDougall that any further inquiry on this matter must be in writing. I will not respond to any further phone calls on this matter.

Sincerely,

Roland Watkins
Director, Arbitration Services

cc: Gordon MacDougall

UNION PACIFIC RAILROAD
LABOR RELATIONS
1416 Dodge Street, Room 332, Omaha, Nebraska 68179

FAXCOM

DATE: October 14, 2003

TO: Roland Watkins

National Mediation Board

FAX NO: (202) 692-5086

FROM: BILL LOOMIS

NE: (402) 271-5446

Number of Pages: One (Not including this sheet)

COMMENTS: This concerns the request of John E. Grother for arbitration in accordance with Article IV of the New York Dock labor protective conditions.

From fax (402) 271-2463

UNION PACIFIC EXHIBIT 12
PAGE 15 OF 19

JOB STATUS REPORT

TIME : 10/14/2003 16:06
NAME : UPRR LAB REL OMAHA
FAX# : 402-271-2463
TEL# : 402-271-2463

DATE,TIME	10/14 16:06
FAX NO./NAME	912026925086
DURATION	00:00:30
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

UNION PACIFIC RAILROAD

LABOR RELATIONS

1416 Dodge Street, Room 332, Omaha, Nebraska 68179

FAXCOM

DATE: October 14, 2003

TO: Roland Watkins

National Mediation Board

FAX NO: (202) 692-5086

FROM: BILL LOOMIS

PHONE: (402) 271-5446

Number of Pages: One (Not including this sheet)

UNION PACIFIC EXHIBIT 12
PAGE 16 OF 19

COMMENTS: This concerns the request of John E. Grother for arbitration

UNION PACIFIC RAILROAD COMPANY

W. E. LOOMIS, GENERAL DIRECTOR
EMPLOYEE RELATIONS PLANNING
1416 DODGE STREET - ROOM 332
OMAHA, NE 68179
(402) 271-5446
FAX (402) 233-2499

October 15, 2003

Mr. Roland Watkins
National Mediation Board
Washington, DC 20572

Dear Mr. Watkins:

This refers to your letter of August 11, 2003 in connection with John E. Grother's request for arbitration, in accordance with Article IV of the New York Dock labor protection conditions. Enclosed with your letter was a list of seven (7) qualified neutrals. During telephone discussions with Mr. Grother's attorney, Gordon P. MacDougall, Union Pacific has attempted to reduce that list to a single neutral by means of the alternate strike method. Unfortunately, our efforts in this regard have not been successful. For your records, and only for the purpose of this case, had the alternate strike method been utilized, Union Pacific's three strikes would have been Barbara C. Deinhardt, Ira F. Jaffe and Robert M. O'Brien.

Sincerely,

W. E. Loomis

CC: John E. Grother
1718 Rustic Park Drive
Kingwood, TX 77339

Gordon P. MacDougall
Suite 410
1025 Connecticut Ave. NW
Washington, DC 20036

LAW OFFICES
GORDON P. MACDOUGALL
1025 CONNECTICUT AVE. N. W.
WASHINGTON, D. C. 20036

TELEPHONE
AREA CODE 202
223-6738

December 31, 2003

Mr. Roland Watkins
Director, Arbitration Services
National Mediation Board
Washington DC 20572

REC'D
JAN - 5 2004
Labor Relations

Re: New York Dock: Union Pacific Railroad Company
and John E. Grother

Dear Mr. Watkins:

This is in reference to the June 23, 2003 request by Mr. John E. Grother for arbitration pursuant to the New York Dock employee protective conditions, and the various exchange of correspondence subsequent thereto.

Mr. Grother, during all relevant periods, has been a non-agreement employee; and he was not associated with counsel until on or about August 11, 2003, when the undersigned was engaged. Previously, you had furnished Mr. Grother, and the carrier, with the names of individuals for consideration as the neutral member of an arbitration committee.

Unfortunately, the carrier has insisted upon a system of selecting a neutral by an alternate strike method, apparently recently prescribed or utilized in situations involving carriers and labor organizations. There have been no meaningful discussions since receipt of the carrier's October 15, 2003 letter to you.

The alternate strike method is deemed prejudicial to Mr. Grother, particularly in light of contemplated issues peculiar to this non-agreement employee, which appear to include matters of official vis-a-vis employee, in contrast with management vis-a-vis labor.

Accordingly, under the circumstances, this is to request that you select the neutral member of the arbitration committee. From Mr. Grother's standpoint, you may wish to consider a person heretofore either named or unnamed, or not on any previous list, and either with or without railroad industry experience, as may be appropriate.

Mr. Grother's preference for location of any hearing by the arbitration committee would be the Washington DC area.

Very truly yours,

Gordon P. MacDougall

cc: John E. Grother
William E. Loomis

UNION PACIFIC RAILROAD COMPANY

W. E. LOOMIS, GENERAL DIRECTOR
EMPLOYEE RELATIONS PLANNING
1416 DODGE STREET - ROOM 332
OMAHA, NE 68179
(402) 271-5446
FAX (402) 233-3499

January 6, 2004

Mr. Roland Watkins
National Mediation Board
Washington, DC 20572

Dear Mr. Watkins:

This refers to the December 31, 2003 letter from Gordon P. MacDougall, who is representing John E. Grother in his request for arbitration in accordance with Article IV of the New York Dock labor protective conditions.

Thus far, the Board's and Union Pacific's handling of this matter has been in strict compliance with your April 28, 2000 memorandum which sets forth the procedure to be followed when the Board is requested to furnish a neutral to resolve New York Dock disputes. The procedure broke down when Mr. MacDougall was unwilling to utilize the strike method to reduce the list of seven neutrals furnished with the Board's letter of August 11, 2003 to a single neutral. Without offering any explanation why, Mr. MacDougall now states, in his December 31, 2003 letter, that the alternate strike method is "... prejudicial to Mr. Grother...."

The Board will note Union Pacific's letter of October 15, 2003 contains its three strikes, thus reducing the list of neutrals to four. Union Pacific does not object to Mr. MacDougall's request for the Board to select the neutral member of the arbitration committee. In fact, this appears to be the only option left to move this matter forward. However, Union Pacific's position is the Board should comply with its own stated procedure by making that selection from among the four neutrals remaining on the list.

Sincerely,

W. E. Loomis

CC: John E, Grother
1718 Rustic Park Drive
Kingwood, TX 77339

Gordon P. MacDougall
Suite 410
1025 Connecticut Ave. NW
Washington, DC 20036

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

(202) 692-5000

WEL
JAN 26 2004

REC'D
JAN 26 2004
Labor Relations

January 21, 2004

Ms. Lynette A. Ross
1220 Fairway Drive
Lawrenceburg, KY 40342

RE: New York Dock Arbitration: John Grother and the Union Pacific Railroad Company

Dear Ms. Ross:

The National Mediation Board designates you as arbitrator ("neutral/referee member") for arbitration pursuant to the above-captioned New York Dock Protective Conditions. The parties to the disputes with respect to this appointment are John Grother and the Union Pacific Railroad Company. The NMB's action is pursuant to the dispute resolution procedures provided by the ICC's New York Dock labor protective conditions, 360 ICC 60 (1979), aff'd. sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

New York Dock conditions provide that the arbitrator's salary and expenses shall be "borne equally by the parties to the proceeding" and that all other expenses shall be paid by the party incurring them." Therefore, it is necessary that you communicate with the parties concerning your availability, per diem compensation and other details.

The arbitrator, not the NMB, is responsible for scheduling and other appropriate procedural determinations concerning the arbitration process. However, we would appreciate receiving a final copy of the award for our files.

In Denver & Rio Grande Western Railroad Co., 7 NMB 409 (1980), the Board addressed its limited role with respect to requests for arbitral appointments under ICC employee protective conditions. As stated in that decision:

> This Board has no authority to look behind the procedural soundness of any such requests. Rather, the Board acts in a ministerial capacity on the basis of

> administrative comity with the Interstate Commerce Commission. Any adjustments or review of the procedural and technical issues you have raised in this matter must be heard before a forum other than this Agency.

Consistent with Rio Grande, the NMB's action is purely ministerial. It does not indicate any determination with respect to whether the prerequisites for invoking arbitration have been satisfied, or whether other circumstances might permit or preclude the ultimate arbitration of the dispute in question. This agency has no authority to adjudicate the procedural validity of such requests. Rather, the Board acts in an appropriate ministerial capacity in order to serve the public interest by extending comity to the ICC's dispute resolution process.

The NMB's designation of an arbitrator in this matter has no legal consequence to any of the affected parties or potential parties. If any individual, carrier or organization determines that it is not appropriate to proceed with arbitration, this agency will not act to compel participation in the arbitration process. Such procedural issues must be resolved before a forum other than the NMB. The Board's action only provides a qualified arbitrator if arbitration ultimately is pursued.

The NMB has no legitimate role in the resolution of any procedural or technical questions with regard to this dispute, and should not be a party to them.

A decision by the United States Court of Appeals for the Eighth Circuit confirms the appropriateness of the NMB's approach to this matter. Ozark Air Lines, Inc. v. National Mediation Board, et al., 797 F.2d 557 (8th Cir. 1986). In that decision, the Court of Appeals recognized that it would be contrary to "public policy" to "force it [the NMB] to decide the appropriateness of each request for an arbitrator" because such a role "would seriously interfere with NMB's neutrality in labor-management relations, run counter to Congressional policies in creating NMB, and retard its statutory purpose." 797 F.2d at 564.

The Court also found that "forcing it [the NMB] to decide whether each dispute is arbitrable would significantly undercut its impartiality and 'impair its ability to constitute a significant force for conciliation.'" Id. The Court of Appeals further determined that "no justiciable controversy existed" in connection with the NMB's contested appointment of an arbitrator though the underlying dispute was not arbitrable.

This discussion of the NMB's ministerial role regarding arbitral appointments does not indicate reservations concerning the use of arbitration.

It is the NMB's experience that arbitration has proven to be an effective and efficient dispute resolution process.

By direction of the NATIONAL MEDIATION BOARD.

Roland Watkins
Director, Arbitration Services

Copies to:

Mr. John E. Grother
1718 Rustic Park Drive
Kingwood, TX 77339

Gordon P. MacDougall
Representative for John E. Grother
Suite 410
1025 Connecticut Avenue, NW
Washington, DC 20036

Mr. W. E. Loomis
General Director
Employee Relations Planning
1416 Dodge Street
Room 332
Omaha, NE 68179

34500
EB

SERVICE DATE - APRIL 21, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 42)

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

(Arbitration Review)

Decided: April 19, 2004

John E. Grother (petitioner), an employee of the Union Pacific Railroad Company (UP) who is not represented by a labor organization, has filed a petition asking the Board to establish the procedures to be used in an arbitration proceeding to consider claims against UP for benefits under the New York Dock conditions.[1] The petition will be denied.

BACKGROUND

In approving the acquisition and control of the Southern Pacific Rail Corporation (SP) and its rail carrier subsidiaries by the Union Pacific Corporation and its rail carrier subsidiaries, the Board imposed the New York Dock conditions for the protection of affected employees.[2] Petitioner, who was employed at SP's yard at Tucson, AZ, claims that he is entitled to a displacement allowance under those conditions because he was adversely affected by problems that arose when UP attempted to consolidate switching between its Phoenix and Tucson yards in May of 1997. Petitioner filed his claim with UP under Article IV of the New York Dock conditions, which accords employees who are not represented by a labor organization the same level of protection as accorded to represented employees. In a letter dated June 16, 2003, petitioner asked the National Mediation Board (NMB) to select a neutral for an arbitration committee to consider his claim. In a letter dated January 21, 2004, the NMB designated Ms.

---

[1] New York Dock Ry.–Control–Brooklyn Eastern Dist. 360 I.C.C. 60 (1979) (New York Dock), aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

[2] Union Pacific/Southern Pacific Merger, 1 S.T.B. 233, 452-53, 553 (1996), aff'd sub nom. Western Coal Traffic League v. STB, 169 F.3d 775 (D.C. Cir. 1999).

Lynette A. Ross as the neutral arbitrator to handle the dispute.[3] NMB's letter indicated that the arbitrator "is responsible for scheduling and other appropriate procedural determination concerning the arbitration process."[4]

The petition indicates that the parties, while agreeing to most of the terms for the proposed arbitration, have been unable to agree on the extent and presentation of a written record and the place for an oral hearing. Petitioner proposes that the record be developed in a three-step process similar to the Board's arbitration procedures in 49 CFR 1108.8, whereby the complaining party proceeds first with a written statement, the defendant proceeds next, and the complainant has an opportunity to reply. Petitioner also asks that the hearing be held in Washington, DC. UP proposes that the parties submit single and simultaneous written submissions, followed by an oral hearing in Chicago, IL.

In his petition, Mr. Grother asserts that the procedures proposed by UP would not produce an adequate record for the Board to review. He argues that simultaneous submissions, with no opportunity for written responses, would not enable the parties to address fully the issue of causality, if UP were to contend that petitioner was not adversely affected by the transaction. Petitioner states further that the hearing should be held in Washington, DC, where the parties and the arbitrator would have access to unpublished material of the NMB and the Board.

In its response in opposition to the petition, UP asserts that the petition is premature because it raises routine procedural issues that, if they cannot be agreed upon by the parties, should be resolved by the neutral member of the arbitration committee. Citing 49 CFR 1108.2(b), UP states further that the Board's three-step arbitration procedures referred to by petitioner are designed for disputes involving the payment of money or involving rates and practices related to rail transportation or service subject to Board jurisdiction, and not for a New York Dock arbitration proceeding. UP requests that the Board dismiss the petition for lack of jurisdiction at this time, and remand the procedural issues to the arbitration committee for resolution.

DISCUSSION AND CONCLUSIONS

---

[3] The other members of the panel are Mr. Grother and Mr. W. E. Loomis, representing UP.

[4] Petitioner supplemented the record on March 5, 2004, forwarding a letter from Ms. Ross. Petitioner also submitted a comment/letter on March 12, 2004, expressing disagreement with UP's characterization of Mr. Grother as a management employee.

Under the deferential Lace Curtain standards of review,[5] the Board may review final decisions issued by arbitrators under the New York Dock labor protection conditions. The Board may also consider interlocutory appeals from an arbitrator's decision prior to a final arbitration decision in extraordinary circumstances. Union Pacific/MKT Merger--UTU Implementing Agreement, Finance Docket No. 30800 (Sub-No. 28) (ICC served Aug. 8, 1989).

Here, however, the Board has not been asked to review an arbitrator's decision. Rather, the petition seeks to have the Board become involved in a preliminary phase of this arbitration proceeding customarily handled by the arbitrator, i.e., scheduling and making procedural determinations concerning the arbitration process. These functions are properly encompassed within the arbitrator's authority to resolve disputes under the New York Dock labor protection conditions. Because the arbitrator controls the arbitration, she should be the person who determines where and how those proceedings should be conducted. Petitioner should attempt to reach an agreement with UP on the matters it has raised, and, if no agreement can be reached, seek resolution by the neutral arbitrator. Accordingly, the petition will be denied.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition is denied.

2. This decision is effective on its service date.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary

---

[5] Chicago & North Western Tptn. Co.-Abandonment, 3 I.C.C.2d 729 (1987), aff'd sub nom. International Broth. Of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988) (Lace Curtain). Under the Lace Curtain standards, 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.

LAW OFFICES
GORDON P. MACDOUGALL
1025 CONNECTICUT AVE. N. W.
WASHINGTON, D. C. 20036

TELEPHONE
AREA CODE 202
223-0706

April 23, 2004

Vernon A. Williams
Secretary
Surface Transportation Board
Washington DC 20423

REC'D
APR 29 2004
Labor Relations

Re: Finance Docket No. 32760 (Sub-No. 42), Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (Arbitration Review)

Dear Mr. Williams:

This is to request that the decision in the entitled proceeding, served April 21, 2004, be corrected in the following respects, at page 1, final paragraph, 2nd sentence, and 3rd sentence, with text to be stricken indicated by dash, and to be added by underline, as follows:

> Petitioner, who was employed at SP's yard at Tucson, AZ, claims that he is entitled to a displacement allowance, among other benefits, under those conditions because he was adversely affected by problems that arose when UP attempted to consolidate switching between its Phoenix and Tucson yards in May of 1997. Petitioner ~~filed his claim with UP~~ invoked arbitration under Article IV of the New York Dock conditions, which accords employees who are not represented by a labor organization substantially the same level of protection as accorded to represented employees.

Although the decision correctly states petitioner seeks a displacement allowance, such is not the entire basis for his benefits. Moreover, petitioner did not file a "claim" with UP under New York Dock's Article IV, but invoked arbitration under that provision. Perhaps the use of "claim" as both a noun and verb may have caused the misleading sentences. The NYD conditions embrace more than displacement allowances, and also include matters such as fringe benefits, moving expenses, etc. 360 I.C.C. at 87-90. Finally, the word substantially should be added to the second sentence, so as to track the exact wording of Article IV, 360 I.C.C. at 90.

The paragraph as it presently stands does not correctly reflect the record filed with the Board, and does not correctly reflect the language of the NYD conditions.

Very truly yours,

UNION PACIFIC EXHIBIT 18
PAGE 1 OF 3

149

Gordon MacDougall

Attorney for John E. Grother

cc: W.E. Loomis
L.A. Ross

150

34764 SERVICE DATE - LATE RELEASE JUNE 10, 2004
SEC

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 32760 (Sub-No. 42)

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

(Arbitration Review)

June 10, 2004

NOTICE TO THE PARTIES:

On April 26, 2004, John E. Grother, the petitioner in this arbitration proceeding, submitted a letter requesting minor modifications to the background section of the Board's decision that was served on April 21, 2004. Petitioner notes that he initiated this proceeding by invoking arbitration under Article IV of the New York Dock conditions, rather than filing a claim with his employer under Article IV. He also seeks two other modifications in the decision. The requested modifications are not material to the Board's decision and need not be made.

Vernon A. Williams
Secretary

UNION PACIFIC EXHIBIT 18
PAGE 3 OF 3

MA-5D

MEMORANDUM OF AGREEMENT

BETWEEN

JOHN E. GROTHER

AND

UNION PACIFIC RAILROAD COMPANY

****

WHEREAS, John E. Grother (Grother) and Union Pacific Railroad Company (Union Pacific) are in dispute as to the interpretation, application, or enforcement of the so-called New York Dock protective conditions prescribed by the Surface Transportation Board (STB) in its Finance Docket No. 32760, Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (August 6, 1996); a neutral/referee having been designated January 21, 2004 by the National Mediation Board; and a decision having been issued April 21, as clarified June 10, 2004, by the STB in its Finance Docket No. 32760 (Sub-No. 42), Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (Arbitration Review), and a telephone conference held June 7, 2004, among the parties and the neutral/referee, and without prejudice to the differing positions of the parties, but for the purpose of establishing procedures to permit the arbitration to proceed in light of the views of the neutral/referee,

UNION PACIFIC EXHIBIT 19
PAGE 1 OF 4

1532

IT IS AGREED:

A. There shall be established an arbitration committee (committee), which shall consist of three members. The member representing Grother shall be John E. Grother. The member representing Union Pacific shall be William E. Loomis. The neutral member and chairperson shall be Lynette A. Ross. Either Grother or Union Pacific may change its member of the committee by advance written notice to the other members of the committee.

B. The compensation and expenses of the Grother member shall be borne by John E. Grother. The compensation and expenses of the Union Pacific member shall be borne by Union Pacific Railroad Company. The compensation and expenses of the neutral member shall be borne equally by Grother and Union Pacific.

C. The committee shall hold its initial hearing at Washington, D.C. on October 12, 2004. The time and place for subsequent hearings, if any, shall be determined by the committee.

D. The partisan members of the committee shall serve written submissions, one upon the other, simultaneously, with copy to the neutral/chairperson, by sending via a second day delivery service on September 14, 2004. At the hearing, the parties may be heard in person, or by counsel, and they may present witnesses, statements of fact, supporting evidence, data and argument. The committee shall have the authority to require the production of such additional evidence, either oral or written, as it may desire from either party. The parties, at their discretion, may present post-hearing briefs within 20 days following the close of the hearing.

E. The committee shall have jurisdiction only to decide questions concerning the interpretation, application, or enforce-

UNION PACIFIC EXHIBIT 19
PAGE 2 OF 4

ment of New York Dock conditions to Grother and Union Pacific. The matter of the measure of compensation and/or benefits due Grother, if any, will be deferred until, and only considered after, the Committee first finds that New York Dock is applicable to Grother, and that he may be entitled to some compensation and some benefits.

F. Within 45 days after the conclusion of the initial hearing and close of that record, which determines the applicability of New York Dock to Grother, the committee shall render a written decision, which shall become effective when signed by two members. If the decision finds that New York Dock is applicable to Grother, and that he may be due some compensation or some benefits, the partisan members will then attempt to agree on the measure of such compensation or benefits. If the partisan members are unable to agree on such compensation or benefits, the committee will, upon a request submitted by Grother or Union Pacific within 60 days from the effective date of the first decision, hold a subsequent hearing to determine the measure of compensation or benefits due. The schedule and procedures for advance submissions for any subsequent hearing(s) shall be by agreement of the partisan parties or, failing agreement, by the committee. Within 45 days after the subsequent hearing is concluded and the record is closed, the committee shall render a decision, setting forth the measure of compensation or benefits due Grother, which shall become effective when signed by two members.

G. Each member of the committee shall have one vote, and two members of the committee shall be competent to adopt a decision or make such other rulings and decisions as may be necessary to carry

UNION PACIFIC EXHIBIT 19
PAGE 3 OF 4

out the functions of the committee. If an initial decision is in favor of Grother, it shall declare the applicability of New York Dock to him for the STB authorization(s) and, if a further decision is issued, it shall specify a remedy and direct the carrier to comply therewith on or before the date named in the decision.

H. The committee shall continue in existence until its decision(s) have become effective, after which it shall cease to exist, except for interpretation of its decision(s).

I. The time limits provided herein may be extended, or shortened, by mutual agreement of the parties.

Signed this 19TH day of June, 2004.

FOR: JOHN E. GROTHER

Gordon MacDougall

FOR: UNION PACIFIC RAILROAD COMPANY

UNION PACIFIC EXHIBIT 19
PAGE 4 OF 4

156

AGREEMENT

between the

UNION PACIFIC RAILROAD COMPANY

and the

UNITED TRANSPORTATION UNION
(SP WEST)

In Finance Docket No. 32760, the Surface Transportation Board (STB) 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 the New York Dock Labor Protective Conditions.

The parties understand that this document is the result of voluntary negotiations outside of merger negotiations and that the provisions entered into below are separate and apart from merger notices. Complete negotiations beginning with the service of notice under New York Dock conditions must still be handled for each merger area and those requirements are not waived by this Agreement. However, in order to reach a mutually satisfactory understanding for the handling of future UP/UTU SP West negotiations with regards to the collective bargaining agreement that will be selected by the Carrier and to equalize many of the pay and work rules on the UP system,

IT IS AGREED:

I. MUTUAL COMMITMENT

A. Union Pacific agrees that the SP-West UTU collective bargaining agreement (CBA), as amended by this Agreement, will be the governing collective bargaining agreement for the following territory: Starting either with the Portland Hub (as defined in the applicable merger implementing agreement/award) and The Dalles or one crew change point south out of Portland and The Dalles; to Elko, Nevada; to Yermo, California, and ending either one crew change point west out of El Paso or one crew change point northeast, east and southeast out of El Paso.

NOTE: The trackage between Barstow, California and Mojave, California will be joint trackage for both SP and UP South employees until that area is under a single collective bargaining agreement.

B. SP-West UTU agrees the collective bargaining provisions set forth below, in Sections II- XI and attachments (A-E) will constitute agreed-upon changes to the SP-West UTU collective bargaining agreement.

II. PROTECTION

A. All- SP West trainmen/switchmen (not including UP borrow outs on the SP) with a seniority date prior to June 1, 1997, working under the provisions of the SP-West UTU CBA as amended, will receive one test period average (TPA) composed of two parts - one part based on the employee's wages for calendar year 1996 and one part based on the employee's productivity fund payments earned in the productivity fund year 1996, if any. The wages part of the TPA shall be computed in accordance with the provisions of New York Dock. The total amount, wages plus productivity fund payments will be divided by twelve (12) to achieve a monthly TPA.

NOTE 1: In accordance with New York Dock, an employee's TPA will not include certain taxable and non- taxable items such as but not limited to relocation, lump sums, lump sum claims settlements, protection payments and away-from-home meal allowances. It will include the $12.50 for in lieu meal allowances.

NOTE 2: Without prejudice to either party's position, the 1996 TPAs will include claim settlements paid in that year, including penalty payments, whether attributable to that test period or not. During the protective period, similar payments will be used as an offset to the monthly protection. This does not include lump sum claim settlements such as, but not limited to, the electric switch settlement nor the other items referred to in the Agreement and the letter included as Attachment "F" hereto.

B. Each employee who receives a TPA under Section II(A), above, will be automatically certified as a protected employee at the time of implementation of this amendment to the SP-West UTU Collective Bargaining Agreement. This protection shall be known as "Interim protection" and shall apply until the employee is covered by a New York Dock implementing agreement/award. Interim protection shall apply to all employees regardless of whether pre-July 9, 1990 crew consist protected or not. (See Paragraph F, below, for protection coverage after the employee's New York Dock protective period expires.) Any protection afforded because of this section and which occurs prior to the beginning of an employee's New York Dock protective period under a separate New York Dock implementing agreement/award, will be separate and apart from that protection and will not be used as an offset against the employee's New York Dock protective period.

EXAMPLE

	Emp A*@	Emp B*@	Emp C#	Emp D*@
Date of Hire	5/20/78	6/13/62	4/10/94	7/7/67
Eff. Date of Agmt	11/1/97	11/1/97	11/1/97	11/1/97
Date of Interim Prot	11/1/97	11/1/97	11/1/97	11/1/97
Date of Mer Imp Agmt	12/1/97	1/1/98	4/1/98	8/1/98
Merger Protection	NYDock	NYDock	NYDock	NYDock
Exp of NY Dock	12/1/03	1/1/04	4/1/02	8/1/04
Crew Consist Prot	Yes	Yes	No	Yes

*Crew Consist Protected employee
@NYDock protection for 6 years (based on length of service with a maximum of 6 years of service)
#NYDock protection for 4 years (based on length of service with 4 years of service)

The purpose of this example is to show that the interim protection is not offset against the number of years entitled under New York Dock.

C. Employees now covered by a protective arrangement may elect to continue coverage under that arrangement consistent with the New York Dock labor protective conditions.

Note : In accordance with Paragraph C, above, employees eligible for Peninsula Commute Service (PCS) or Siskiyou labor protection may elect to retain that coverage and convert to the protection afforded by this agreement upon expiration of the PCS or Siskiyou protection. (Employees who elect that protection shall remember that productivity funds have been converted to protection under this agreement and are not available under PCS and Siskiyou protection).

D. Each SP-West employee who worked a minimum of 150 yard shifts in 1996 as a regularly assigned yard employee will have that portion of his/her TPA that is based on calendar year 1996 wages increased by 14.82%. This is a one-time adjustment to equalize SP yard rates with National yard rates and will only apply to those SP-West employees who meet the requirements set forth in this Paragraph D. This increase will not apply to that portion of the TPAs based upon productivity fund payments.

E. Each SP-West UTU certified employee's TPA (wages plus productivity fund) will be subject to change based on future wage and COLA adjustments. The time period for computing such changes will begin with the implementation of this Agreement and shall run for the length of the employee's New York Dock protection. If this Agreement is initialed prior to August 14, 1997, then the July 1, 1997 National Increase shall apply if this Agreement is subsequently approved.

F. After expiration of the employee's New York Dock protective period, each pre-July 9, 1990 crew consist protected SP-West UTU employee will continue as a Crew Consist Protection protected employee for the employee's remaining employment in the craft of trainman/switchman subject to the following: the employee's TPA will be at the amount of the employee's final protection rate established in accordance with Paragraph E, above, and shall not be subject to future increases. The handling of crew consist protection payments and offsets will continue to be handled in the same manner as under New York Dock as detailed in this Agreement.

G. The TPAs for full-time and part time union officers will be based on the officer's own TPA or a TPA average derived from the two employees directly above and the two employees directly below the official, working at the official's normal work location and on the official's seniority roster. In calculating such an average, UP will "de-select" any employees with unusually low or high earnings. Full time and part time union officers are defined as General Committee and Local Committee officers.

H. All protection afforded and referenced in this Article II will be income (wage plus productivity fund where applicable) protection only. There will be no hours computation/hours protection for any afforded/referenced protection. Protection offsets are set forth in the Q&A's.

I. Employees will be eligible for the interim protection upon implementation of this Agreement. They shall become eligible for New York Dock and Crew Consist Protection only upon implementation or imposition of the negotiated merger proposal for each Hub, and if the SP-West agreement is applicable in that Hub after the merger. The parties agree to use best efforts to achieve a negotiated settlement.

III. NATIONAL WAGES AND RULES

A. SP-West UTU wage rates will now equal the national wage rates. (A copy of those wage rates is attached as Attachment E.) Previous lump sum payments provided for in the November 11, 1991 and May 8, 1996 National Agreements will not be made; however, future lump sum payments will be made in accordance with national agreements.

B. All provisions of the November 11, 1991 and May 8, 1996 National Agreements will apply to territory governed by the SP-West UTU collective bargaining agreement unless specifically provided for in this Agreement. Agreement provisions which will apply include, but are not limited to, the following: Promotion to Conductor, Expenses Away from Home, Road/Yard Work, Special Relief-Customer Service-Yard Crews, Interdivisional Service and Basic Day.

C. The current SP-West UTU eating rule will apply for local and road switcher service. Yard service will be governed by the national standard for eating in yard service. The Carrier will continue to pay the $12.50 in lieu of allowance for pool freight runs until an area has been finalized in the merger with an agreement or award. Once an area has

been incorporated in a merger Hub, then the national $1.50 in lieu of allowance will be paid on all pool freight runs.

D. All current employees (employees working in train/yard service at the time of implementation of this agreement) will have the entry rate provisions waived and will be paid at 100% of the National wage rate.

E. All new hires after the date of implementation will be subject to the following: entry rates will start at 85% of the national rate provided for in Section III(A), above, for first-year employees; at 90% for second-year employees; at 95% for third- year employees; and, at 100% for fourth year employees. These employees will be entitled to the 5% bump for promotion as provided for in Article VIII of the May 8, 1996, UTU National Agreement. Employees promoted to another craft will not restart their protection.

F. Current employees will retain the 100% entry rate of pay percentage at the time of promotion to another craft.

G. The SP-West UTU collective bargaining agreement will be subject to the National Moratorium set forth in the May 8, 1996, National Agreement, and all local notices and re-opener provisions in conflict with that Moratorium are null and void.

IV. CREW CONSIST

A. Because of the extended protection for crew consist protected employees provided for in Section II, above, all SP-West UTU special allowances and productivity fund payments will cease with the implementation of this Agreement.

B. (1) The standard crew for all through freight and for all hours-of-service relief will be one (1) conductor. There will be no car count or train length limitations in the operation of crews with one (1) conductor. There will be no car count, train length or work event restrictions of any type in the operation of crews with one (1) conductor/foreman and (1) brakeman/helper

(2) Trains operated with a crew of one (1) conductor will be restricted to no more than three work events en route between the initial and final terminals, subject to the following:

a. A work event is considered to be a straight pick-up or set-out.
b. Picking-up, setting-out or exchanging one or more locomotives and setting-out a bad order car shall not be considered a work event.
c. Work performed in the initial and/or final terminal will be governed by applicable rules, including all national rules.
d. Should a conductor be required to exceed three work events en route between terminals, the conductor shall also be paid the missing brakeman's wages. Only one such payment will be made regardless of the number of excess work events performed.

UNION PACIFIC EXHIBIT 33
PAGE 5 OF 28

(3) The standard crew for local and road switcher service will be one (1) conductor and one (1) brakeman.

(4) The standard crew for yard service shall be determined according to the following:

a. The Carrier may operate the same percentage of yard jobs foreman-only in a merged hub as it was entitled to operate foreman-only on May 19, 1997.

EXAMPLE: In the merged Los Angeles Hub, prior to merger UP had 30 switch engines and under the agreement was entitled to operate all 30 foreman-only. In the same merged hub, prior to the merger SP had 60 switch engines. In the merged Los Angeles Hub, the carrier may operate one-third of the switch engines foreman-only.

b. The Carrier may establish utility positions in accordance with Attachment "A" to this agreement which may assist any number of both road and yard assignments at any location within a hub.

(5) The standard crew for non-revenue (including work train) service will be one (1) conductor/foreman. If the local chairman for the territory involved believes the assignment warrants a crew of one (1) conductor/foreman and (1) brakeman/helper, the local chairman and the local carrier officer responsible for that territory will conduct a joint check of the assignment to determine if a brakeman/helper is needed. If unable to agree, the criteria shall be that a brakeman/helper shall be needed if the assignment works four (4) or more hours on the ground or riding the outside of the equipment.

V. DISABILITY/LIFE INSURANCE/MEDICAL

A. All current SP-West UTU employees and subsequent new-hire employees who will work under the SP-West UTU collective bargaining agreement will be covered for medical benefits by the applicable National Plan (health, dental and, as of 1/1/99, vision).

B. Current SP-West UTU employees will continue to receive the disability and life insurance coverage now afforded them under the UTU SP-West collective bargaining agreement, if any, subject to Section C, below, for six years from January 1, 1998, whether a merger implementing agreement is or is not reached for each hub. Those former SP-West trainmen (Salt Lake - East) who transferred to the Salt lake City Hub will continue their disability for the same period so the group benefit ends on the same day. After the end of the six year protective period, the disability and life insurance policies will be eliminated from the SP-West UTU collective bargaining agreement, unless otherwise provided. It is understood this Agreement is made without prejudice to the positions of either party regarding whether or not such benefits are subject to preservation under New York Dock. This Agreement will not be cited by any party in any other negotiations or proceedings.

C. The SP-West UTU agreement covering disability premium payments will be upgraded to $63.10 This is not a guarantee for benefit levels; it is only a guarantee for the amount of premium paid by the carrier per employee. Such payments will cease in accordance with Section V(B), above.

D. The UTU Committee may discuss joining the Union Pacific Employees Health Systems (UPEHS). The Carrier agrees that is a matter between the UTU and UPEHS.

VI. EXTRA BOARDS

A. The seniority extra board and no-bid vacancy rules will be amended as follows:

1. All seniority extra boards will become rotary extra boards working first-in, first-out.

2. Whenever a vacancy goes no-bid, the Carrier may fill that vacancy from the reserve board if available, or then the senior furloughed employee. If none available, then the junior employee on the extra board covering that position will be assigned. Vacancies on the extra board will be filled from the reserve board or the senior furloughed employee.

B. Extra Board types, guarantee rates and rules shall be as set forth in Attachment "B" to this agreement.

VII. ROTARY POOL FREIGHT SERVICE

A. All through freight service will be rotary pool freight service with blue print board provisions for placing employees in the proper order at the home terminal and at the far terminal. Blue Print provisions are attached hereto as Attachment "C" and will be applicable as each merger Hub is implemented. Employees are not runaround if used on the train for which called.

B. Assigned pool freight conductors will be allowed to trade pool turn positions with other conductors in the same pool subject to the following conditions:

1. The UTU Local Chairman or their designated representative shall submit the request to Carrier's CMS on behalf of the conductors wishing to exchange pool turns.

2. Both conductors shall be at their home terminal when the request is made in order to avoid any disruptions to the operation of the pool. However, an exchange may be made where one conductor is on vacation provided the vacation turn is vacant or concurrence is reached with the conductor temporarily assigned.

UNION PACIFIC EXHIBIT 33
PAGE 7 OF 28

3. A trade may be made at any time up to call time provided the conductor who must accept the call is rested and available. A conductor may initiate only two trades per year.

4. No time claims involving runarounds or other penalties arising out of the trading/exchanging of turns under these provisions shall be progressed by or in behalf of any employee.

5. It is the intent of the parties that conductors will limit the use of these provisions to those situations in which they would otherwise have no choice and would be required to miss their turn.

VIII. CLAIMS SETTLEMENT

A. All time claims and grievances of record (a time claim or grievance of record is a time claim or grievance that has been denied by the carrier at any level, including Timekeeping; any claims involving the GRIDPAD arbitration and any claims involving gainsharing) submitted by either an employee or by the UTU as of December 31, 1996, will be settled and resolved by the payment of $3700.00 to each SP-West UTU employee who performed service as a trainman/switchman between January 1, 1990 and December 31, 1996, and who is still in active service with the Carrier or who retired in 1997.

NOTE: It is possible time claim and grievance settlements will be reached with other organizations. Should any individual be entitled to a time claim and grievance settlement payment under this Agreement and under any other agreement, the maximum amount due such an individual will be $3700.00.

B. This settlement does not cover outstanding discipline, medical and non-monetary (such as seniority disputes) cases but covers all other time claims and grievances and gainsharing claims, including those cases which have been docketed for arbitration but not argued and those cases argued at arbitration but where no decision has been rendered.

C. This settlement is final and binding and is made with prejudice regarding the GRIDPAD and gainsharing claims and hereinafter the organization shall not file nor progress any GRIDPAD or gainsharing claims. This settlement is without prejudice or precedent to either party's position with regard to the subject matter of all other time claims and grievances and will not be cited by either party in any future claims conferences, arbitration or negotiation.

D. Since the settlement of all time claims and grievances of record will create a new environment for the grievance process, the following will apply:

1. Formal local conferences are eliminated, however, local chairpersons are encouraged to handle claims and other issues directly with the Carrier's designated Labor Relations managers, assistant managers and labor relations officers; and,

2. The Carrier will no longer reimburse local chairpersons/union officials or employees for attending time claim/grievance conferences.

3. The SP local chairpersons will have access to Carrier records in a manner consistent with UP local chairpersons. Access will be available from home if the Local Chairperson owns sufficient technology, or at the on-duty point.

IX. REGION/SYSTEM AND RESERVE BOARDS

A. All current SP-West UTU train/yard service employees will retain "no furlough" status. Employees transferred to SP-West UTU collective bargaining agreement control as a result of a UP/SP merger implementing agreement and all new hires will not have such status. The Region/System Board Agreement will continue until an agreement or award is reached for each separate merger Hub and then a reserve board agreement will apply to that Hub using the provisions found in Attachment "D" to this agreement. Those provisions will include reserve board eligibility for SP-West UTU employees now entitled to "no furlough" status.

X. 401K PLAN

The current SP-West UTU 401K Plan will no longer be available for future deposits for monies paid after the close of business December 31, 1997. The current UP 401K Plan applicable to train service employees (road and yard) will apply to SP-West UTU train service employees (road and yard) after that date. The parties are negotiating agreements merging the 401K plans.

XI. MORATORIUM

Articles II-Protection and IV-Crew Consist and Attachment (D) are covered by a separate moratorium than the one described in III (F). Since they are in part, crew consist related, the provisions of these two articles and attachment are not subject to change through the Railway Labor Act Section 6 process prior to the attrition of all crew consist protected employees. This does not prevent the parties from voluntarily entering into agreements to modify these provisions.

XII. IMPLEMENTATION

This agreement will be effective in two parts. Article I - Mutual Commitment, Article II - Protection, Article III - National Wages and Rules, Article IV - Crew Consist, Article V - Disability/Life Insurance/Medical, Article VIII - Claims Settlement and Article XI - Moratorium shall become effective on the first day of the first month following notification from the UTU this Agreement has been approved so long as ten (10) days' notice is given the Carrier. The Carrier will begin processing the claim settlement checks as soon as possible. In order to give Timekeeping and CMS sufficient time to make the necessary programming changes, the remaining articles shall be effective on the first day of the first payroll period following a ten (10) days' notice by the Carrier to the UTU.

XIII. SAVINGS CLAUSE

Should any portion of this Agreement including attachments or any of the attached Questions and Answers conflict with the SP-West UTU collective bargaining agreement, this Agreement shall govern.

Signed at San Francisco, California, this 20 day of October, 1997.

FOR THE ORGANIZATION:

General Chairman UTU

Vice-President UTU

FOR THE CARRIER:

AVP Employee Relations

General Director Labor Relations

QUESTIONS AND ANSWERS

Q1. Will Article XXVI (Plant Rationalization) and Article XXVII (Scope Rule) remain as part of the UTU SP-West collective bargaining agreement?

A1. No. Both of those articles will be eliminated with the implementation of this Agreement.

Q2. When an employee is force-assigned to a no-bid position under Article VI(A)(2), how long will the employee be required to stay on that assignment?

A2. The employee will remain on the assignment in accordance with existing agreement provisions.

Q3. Under Article VIII(A) (Claims Settlement), what constitutes "active service with the Carrier ?"

A3. An employee who is working for Union Pacific Railroad Company or who is on a bona fide leave of absence or who is dismissed and later reinstated.

Q4. Under Article IX (Region/System and Reserve Boards), what is a "current SP-West train service employee" for purposes of the "no furlough" status?

A4. A current employee for "no furlough" status is an employee holding seniority on the SP-West trainman/switchman roster prior to the effective date of this agreement. The "no furlough" status will only be applicable when working in train/yard service and not in other crafts or non-agreement assignments.

Q5. Under Article III(D) (National Wages and Rules), will employees on bona fide leaves of absence, dismissed and later reinstated, etc. receive 100% of the National Wage Rate as provided for in that section?

A5. Such employees, upon return to service, will be compensated at 100% of the National Wage Rate.

Q6. Will all SP-West trainmen-switchmen (not including UP borrow outs on the SP) with a seniority date prior to June 1, 1997, working under the provisions of the SP-West UTU collective bargaining agreement who are on a bona fide leave of absence or dismissed and later reinstated be eligible for protection under this agreement upon return to active service ?

A6. Yes. The TPAs for such employees will be calculated in accordance with the procedure set forth in Paragraph G of Article II.

Q7. In Article V, will employees on a bona fide leave of absence or dismissed and later reinstated be considered "current SP-West employees" who are now eligible for the disability and life insurance coverage provided for in that paragraph?

A7. Yes, upon return to service if previously eligible and entitled to those benefits.

UNION PACIFIC EXHIBIT 33
PAGE 11 OF 28

Q8. How will the TPA be calculated for an employee who has less than 12 months compensated service in 1996.

A8. Standard New York Dock conditions will apply. If the employee has more than twelve months service but was off for an entire month then the next previous month with earnings is used, if an employee only had nine months total service then the total is divided by nine.

Q9. Is compensation referred to as "in lieu of" vacation for employees assigned to Region/System Boards excluded from an employees' TPA?

A9. No. Such compensation is not a double payment and will be included in an employee's TPA.

Q10. How will reductions from protection be calculated?

A10. In an effort to minimize uncertainty concerning the amount of reductions and simplify this process, the parties have agreed to handle reductions from Interim, New York Dock and Crew Consist Protection as follows:

1. Pool freight assignments - 1/15 of the monthly test period average will be reduced for each unpaid absence of up to 48 hours or part thereof. Absences beyond 48 hours will result in another 1/15 reduction for each additional 48 hour period or part thereof.

2. Five day assignments - 1/22 of the monthly test period average will be reduced for each unpaid absence of up to 24 hours or part thereof. Absences beyond 24 hours will result in another 1/22 reduction for each additional 24 hour period or part thereof.

3. Six and Seven day assignments - The same process as above except 1/26 for a six day assignment and 1/30 for a seven day assignment.

   NOTE: Assigned rest days for five and six day assignments and Region/System Boards will not be used to offset protection payments.

4. Extra board assignments - 1/30 of the monthly test period average will be reduced for each unpaid absence of up to 24 hours or part thereof. Absences beyond 24 hours will result in another 1/30 reduction for each additional 24 hour period or part thereof. Absences on the extra board shall be calculated from the time of unavailability (layoff, missed call, etc) until the next time called for service. For example: If an employee lays off on Monday at noon, marks up the next day Tuesday and does not work until 2AM on Wednesday then they shall be off for protection purposes for thirty-eight (38) hours and shall be deducted 2/30 of their protection.

Q11. Due to the claim settlement in Article VIII(A), how will TPAs be calculated?
A11. The lump sum claim settlement will not be part of the TPA nor the electric switch lump sum settlement. However, claims paid in the normal claim handling of 1996 will be included if applicable.

Q12. When implemented what happens to Productivity Funds on deposit?
A12. They shall be paid out in the normal manner.

Q13. Upon implementation or imposition of the negotiated merger proposal for each Hub what protection options will an SP-West trainman/switchmen have?
A13. An SP-West trainman/switchmen will have to elect between the protection provided in the negotiated merger proposal and what is negotiated in this Agreement with respect to wage protection. Any relocation protection will be covered in the merger proposal.

Q14. How will post October 31, 1985 trainmen/yardmen who are forced or who make application to engine service after the effective date of this agreement be treated for protection?
A14. They will be treated as holding the highest rated position available when holding the highest rated position in engine service they can hold.

Q15. How will pre-October 31, 1985 trainmen/yardmen be treated for protection when they make a voluntary application and work in engine service?
A15. They will not be treated as holding the highest rated position when working in engine service unless the engine service position is higher paying than any train service position they could have held.

ATTACHMENT A

UTILITY POSITIONS

Utility positions may be established under the following conditions:

A. Utility positions may be established in any yard or at any outside point where a regular assignment may be established.

B. Utility positions may assist both road and yard crews in the performance of their duties. It is not intended that the Utility position will perform the conductor's or foreman's paperwork. It is not the intent of this agreement to create engineer only positions and have the utility assignment perform the groundwork for that engineer. The Utility position is to assist both assignments with ground crews assigned and single assignments permitted by current rules.

C. Utility positions will be paid the applicable foreman's rate of pay.

D. If a Utility position is called extra at the same yard or outside point and in the same starting time bracket for the yard and within one and one-half hours for outside points for four (4) consecutive days, the position shall be bulletined as a regular utility assignment.

E. Utility positions established in yards shall be governed by yard starting time rules, where applicable. Utility positions established at outside points shall be governed by starting time rules governing locals or road switchers, if any. The five (5) day work week provisions shall apply to assignments established in yards and assignments established at road points may be established for 5,6 or 7 days with the days being consecutive.

F. Utility positions established in yards will be restricted to the road/yard service zone limits established by applicable National Agreements, currently 25 miles. Utility positions established at outside points will be governed by road limits of 25 miles in all directions. Employees assigned to Utility positions will not be required to drive their own vehicles within these limits while performing their duties.

G. If an employee assigned to or working a Utility position is assigned to a crew because a conductor/foreman or brakeman/helper has failed to show for work or has gone home sick, the Utility person shall remain with the crew for the remainder of the shift. The Utility person shall be paid the rate of the position worked or of the utility position whichever is greater.

Questions and Answers for Attachment A Utility Positions

Q 1. What facilities must be at the location of the utility assignment?
A 1. The same facilities that are required for a yard crew or local/road switcher.

Q 2. Must the Utility position have the same on and off duty point?
A 2. Yes.

Q 3. Can this assignment work alone?
A 3. The purpose of this assignment is to expedite traffic by assisting other crews. In performing those duties, the Utility assignment is intended to be attached to or work in concert with another crew. The Utility assignment shall be assigned to only one crew at a time and shall be in personal, radio, signal or other contact with the crew it is assisting prior to performing duties for or in conjunction with that crew.

Q 4. Can you give some examples to answer 3?
A 4. A Utility person may be required to do whatever a brakeman/helper could do when instructed to do so by the conductor/foreman.

Q 5. What impact does the utility person have on the calculation of work events?
A 5. None.

Q 6. May a Utility person assist crews from more than one seniority district?
A 6. Yes. In some locations crews from different seniority districts will perform work. A Utility person who holds seniority at such a location may assist any crew that operates into, out of and/or through that location.

Q 7. If a Utility person is attached to a crew and the crew is entitled to an arbitrary payment will the Utility person also receive the arbitrary?
A 7. Yes, if their seniority date would have qualified them for the payment if they had been a regular assigned member of the crew.

Q 8. May a Utility person be used off of their seniority district?
A 8. Yes, if current agreements permit the crew he/she is working with to be so used. For example, a yard crew may be used within the road/yard zone in accordance with the National Agreement even if it is outside their seniority district and a Utility person working with that crew may also be used in the same manner as part of that crew.

Q 9. If a Utility person is assigned in accordance with paragraph (G), does he/she lose the Utility person designation?
A 9. Yes, the Utility person would then be part of another crew and could no longer act as a Utility person.

UNION PACIFIC EXHIBIT 33
PAGE 15 OF 28

170

Q 10. Is the answer to Question 9 intended to apply to road assignments?
A 10. No the provisions are not intended to supersede or circumvent applicable vacancy procedures for road assignments. The provisions are not intended to have Utility positions go beyond the mileage or road/yard zone limitations.

Q 11. If a conductor/foreman fails to show or has gone home sick and a brakeman/helper is assigned to the job and the Utility person is assigned who becomes the conductor/foreman?
A 11. The brakeman/helper if qualified; otherwise, the utility person.

Q 12. Is the Carrier required to assign the utility person as a permanent member of a crew in the above situation?
A 12. No.

Q 13. How will a Utility person know whether they are assigned to a crew or just assisting a crew in that situation?
A 13. They will be so instructed by a supervisor. Should any doubt arise the utility person should specifically ask. If so instructed he/she should contact CMS at the first opportunity and advise that they have been made part of the crew and should so indicate on their time record when tying-up.

Q 14. If an assignment is bulletined or called with a crew comprised of a conductor and one brakeman or a foreman and one helper may the Carrier operate this assignment as two assignments?
A 14. No.

Q 15. Does the presence and/or attachment of a Utility position affect the answer to Question 14?
A 15. No.

Q 16. What assignments may be assisted by a road Utility position and/or a yard Utility position?
A 16. The road and/or yard Utility positions may assist both road and yard assignments.

Q 17. What seniority will be used for filling Utility assignments?
A 17. Yardman's seniority in a yard and brakeman's seniority for road assignments.

Q 18. May relief Utility positions be established?
A 18. Yes, at the same location on the road unless mutually agreed otherwise or in the same terminal.

Q 19. When will road or yard Utility positions qualify for overtime?
A 19. In accordance with applicable yard overtime agreement provisions.

ATTACHMENT B

GUARANTEED EXTRA BOARDS

I. Conductor, brakemen and yardmen extra boards that currently exist shall continue to exist during the interim period; however, they shall be subject to the provisions of Articles II-VIII of this Attachment B.

Note: Extra Board coverage, consolidations and locations shall be further handled in each of the merger Hub negotiations, however, the types of extra boards, pay and layoff provisions shall be as provided in this Agreement.

II. The guarantee on these extra boards shall be as follows:

A. **Combination brakeman/switchman or separate brakeman**	1925 miles per pay period at the brakeman's basic local freight rate of pay for the 1-80 car bracket.
B. **Yardman**	11 days per pay period at the 5-day yard helper rate of pay.
C. **Conductor or Conductor/brakeman or Conductor/brakeman/switchman**	1925 miles per pay period at the conductor's basic local freight rate of pay for the 1-80 car bracket.

These rates of pay are subject to all subsequent adjustments in wages and COLA.

III. Payment of the guarantee will be made in the payroll half following the payroll half in which the guarantee payment was incurred.

IV. The Reserve Board, as provided for in Article IX of this Agreement, will not be used to supplement the guaranteed extra boards.

V. All guaranteed extra boards (GXB) will be regulated by the Carrier subject to the obligation of the Carrier to keep a sufficient number of employees on such boards to permit reasonable absence privileges (including personal leave and vacation). In that regard, Carrier agrees to maintain a minimum number of extra board employees equal to twenty percent (20%) of the assignments (positions) protected by such board.

VI. Employees shall take promotion to conductor as follows:

A. All employees must take promotion to conductor subject to the following: A pre-October 31, 1985 employee who can hold any job other than a conductor's position will not be obligated to take the conductor's examination. If, however, the employee is later unable to hold such a position, the employee will be given thirty (30) days in which to take promotion. Failure to do so will disqualify the employee from holding a position. When conditions exist that require an employee to take the conductor's examination, such employee will also be subject to any penalties that may be imposed through the National Agreement. Employees cannot use this provision to allege that lack of promotion keeps them from holding a higher paying position for purposes of protection. For example, a brakeman cannot pass up promotion and if unable to hold any position claim a dismissal allowance. The employee would be treated as holding a conductor's position. All post-October 31, 1985 employees must take promotion to conductor at the earliest opportunity.

B. The Carrier will hold promotion classes on a regular basis to provide the opportunity for non-promoted trainmen to qualify. Mileage and/or time limits as a brakeman/yardman that may have existed previous to the 1991 National Implementing Agreement governing promotion are no longer applicable.

VII. A. All earnings received by an employee assigned to a guaranteed extra board will be used in computing the employee's guarantee. Time claim payments for periods of time when not assigned to a guaranteed extra board will be paid in addition to guarantee payments made to an employee. Penalty claim payments due employees assigned to a guaranteed extra board will be paid in addition to the earnings received as a guaranteed extra board employee. Such computations will not include non-taxable income such as meal, lodging and personal auto mileage payments. Protection payments are not considered earnings for computing extra board guarantee. All guarantee payments will be calculated and paid prior to protection being calculated and paid.

B. A GXB employee standing first out who lays off, lays off on call, misses call or is not available for call will have the guarantee reduced by the amount he would have earned had he not laid off on call, missed call or not been available for call with a minimum reduction of one guaranteed day.

C. An employee who lays off when other than first out will have his guarantee reduced by one (1) day for each 24-hour period or portion thereof.

D. An employee assigned to a GXB who is unavailable for more than two (2) occurrences per pay period or who is unavailable for more than eighty-four (84) combined hours per pay period, will forfeit his guarantee for that pay period. Elected union representatives who are unavailable because of union work will not be subject to this Section (D) but will be covered by Section (E) of this Article VII of Attachment B.

E. An employee who misses a call as a result of another GXB employee laying off on call, missing call or not available for call when that other GXB employee is first out will have his guarantee reduced by one (1) day for each 24- hour period or portion thereof.

F. The guarantee reductions shall not apply for absences due to Bereavement Leave, Personal Leave Days, Vacations, Rules Classes, Jury Duty, Physical Examinations or other instances where the employee is held at the instruction of the Carrier.

VIII. A. An employee added to a GXB will be paid a guarantee for the day added provided the employee meets the availability requirements of this Agreement. All earnings made on the day added will be included in the computation of the guarantee. Guarantee will not be paid to an employee on the day reduced from a GXB if notified by 1:30 P.M. If an employee is reduced from a GXB but is not notified by 1:30 P.M., then the employee will be paid the guarantee for that day unless the employee voluntarily bid off the GXB.

B. All guarantee compensation paid to employees will be considered as service rendered for vacation pay and qualification purposes.

ATTACHMENT C

BLUEPRINT POOL PROVISIONS

The following shall govern pool freight crews:

I. Pool freight crews who are run around by other pool freight crews in the home terminal, or en route between the home terminal and far terminal will, upon arrival at the far terminal be given the same relative position on the list that they held prior to leaving the home terminal, except that crews who become first out before having required rest shall stand first out after rest period, and upon return to home terminal shall be given the same relative position on board as was held prior to leaving the home terminal on the last trip.

II. Pool freight crews who are run around by other pool freight crews in the far terminal, or en route between the far terminal and the home terminal, will upon arrival at the home terminal be given the same relative position on the list at the home terminal that they held prior to leaving the far terminal except as provided in I, above.

III. Crews requesting extra rest in accordance with the rest rule will retain their position on the blue print board. In the event the crew is run around during the rest period, they will be placed first out at the expiration of their rest period.

IV. At the time of pool adjustments, crews added to the pool in accordance with schedule rules will not be considered as run around when other pool crews arriving at the home terminal are placed ahead of them under the provisions of this Agreement.

V. Upon arrival at the home or far terminal, trainmen who have been run around as indicated in paragraphs I and II, will notify proper officer as to their standing on the list at those points. The Carrier will not be subjected to penalty payments because trainmen fail to furnish information or furnish incorrect information. This does not, however, estop the Carrier from taking disciplinary action when it is developed the employees have furnished incorrect information. In addition no runarounds will be claimed because crews were not called or depart in accordance with the agreement because of that incorrect information.

VI. Merger implementing agreements/awards will handle mark up provisions for pools with multiple destinations.

ATTACHMENT D

RESERVE BOARDS

I. The Carrier shall establish two levels of Reserve Boards for eligible employees working under the SP-West UTU Agreement. These Reserve Boards will be known as regular and ready reserve boards.

II. To be eligible to occupy either of these two reserve boards, an employee must have a seniority date on the SP-West pre-merger roster prior to June 1, 1997 and must be working in train/yard service at the time application is placed for one of the reserve boards. Employees who are on the roster but not working in train/yard service must, upon returning to train/yard service, work a minimum of sixty (60) days in train/yard service prior to becoming eligible for a reserve board position.

III. Reserve Board positions are not available to employees hired subsequent to June 1, 1997. If employees currently working under another UP agreement come under the provisions of the SP-West UTU Agreement as a result of a merger agreement and they were eligible to hold a reserve board under their prior agreement, they shall be entitled to hold a reserve board position, seniority permitting under this Agreement. No employee may hold a reserve board position (ready or regular) if an employee not eligible to hold a reserve board is working in the trainman/switchman craft within the Hub. All non-eligible employees must be displaced prior to reserve boards slots becoming available.

IV. A regular reserve board shall be established for each seniority district created under the SP-West agreement as a result of the merger. An employee on a regular reserve board shall be paid 70 % of the wage portion of their TPA as set forth in Article II (A) of the agreement.

V. A ready reserve board shall be established at each location where an extra board exists. An employee on a ready reserve board shall be paid 85% of the wage portion of their TPA as set forth in Article II (A) of the agreement. The ready reserve board shall be governed by the following:

A. An employee on a ready reserve board that protects road vacancies must be conductor qualified.

B. An employee on a ready reserve board is subject to recall upon 48 hours' notice. Notice shall include telephone notice or attempted notice by telephone. The 48 hours shall begin at the first attempt to notify an employee. A reasonable telephone recall shall be a minimum of three(3) telephone attempts in each eight (8) hours for forty-eight hours.

C. Employees who fail to mark up within the 48-hour period shall have their pay stopped at the end of the 48-hour period and may be subject to discipline.

UNION PACIFIC EXHIBIT 33
PAGE 21OF 28

176

D. Employees on the ready reserve board retain the right to layoff, use personal leave, and take scheduled vacations as provided for in current agreement rules. Employees laying off for other than a paid absence will have their reserve board pay reduced on a day for day basis.

E. Employees on the ready reserve board for a minimum of 30 consecutive days may request to be released from the board, seniority permitting. Such employee may move to the regular reserve board but must remain on the ready reserve board until their replacement is marked up on the ready reserve board. Nothing in this paragraph restricts the right of an employee to make application to working assignments, regular or extra.

F. Employees on the ready reserve board shall be recalled in junior order to extra boards (road, yard or combination) to provide temporary support when additional forces are needed on either a short term or long term basis. If the need is long term, the regular recall provisions from the other reserve board shall continue to apply, and when sufficient forces from the other reserve board have marked up, the ready reserve board employees shall be released back to the ready reserve board, seniority permitting.

Note: If the ready reserve employee is recalled under the regular recall provisions to a permanent vacancy, they will not be released but their reserve board position shall then be available for assignment.

G. The number of ready reserve board positions shall not be less than fifteen (15) percent of total extra board positions at each location. If surplus eligible manpower is available the ready reserve board shall be filled prior to filling any regular reserve board positions.

H. The Organization may elect to have a supplemental extra board in lieu of a ready reserve board. The supplemental extra board shall be paid at 85% of the regular extra board rate and shall be used when the regular extra board is exhausted. The employee first out at noon of each day shall be rotated to the bottom of the board. The Carrier shall determine the number of employees to have on the supplemental board but not less than 15% of the number of extra board positions if sufficient manpower is available. Employees hired subsequent to the June 1, 1997 shall not have rights to hold the supplemental extra board unless permitted by the Carrier.

VI. An employee placed on a reserve board shall remain in that status until:

A. The employee is displaced by another employee through the exercise of seniority.

B. The employee resigns from the Carrier's employment.

C. The employee is recalled to active service. Such recall shall be in junior order.

D. The employee exercises seniority in accordance with applicable rules.

E. The employee is discharged from employment by the Carrier in accordance with the applicable discipline rules.

VII. Employees on reserve boards must maintain their work proficiencies while in such status by successfully completing any retraining or refresher programs required of active employees to maintain those proficiencies which may include the passing of tests or examinations (including physical examinations) administered for purposes of determining whether such proficiencies have been maintained. Employees on a reserve board are "in-service employees" and hence subject to the same physical and rules examinations as other employees. The company's requirement that employees who have been out of service for six months or more must take physical and rules exams does not apply to reserve board employees.

VIII. Employees to be examined while in reserve board status will be notified by certified mail sent to their home address. Employees who fail to respond or fail to pass the exams will have their reserve pay stopped until such time as they do pass the applicable exam. Employees who fail to respond within sixty (60) days of a second notice may be subject to disciplinary action.

IX. Employees on the regular reserve board must hold themselves available for return to service upon thirty (30) days notice (reserve board pay shall continue for only seven (7) days) and must return to service in compliance with such thirty days' notice. Failure to comply with any of these requirements could result in forfeiture of all seniority rights in accordance with applicable discipline rules. Calculation of the seven (7) and thirty (30) day time periods shall begin with written notification (postmark date on the envelope) by certified mail from CMS to the employee. Efforts will first be made to contact the employee by telephone.

X. An employee who returns to service within the first seven days of the thirty day recall period will receive reserve board pay until the end of the seventh day in addition to all other earnings.

Note: Employees on the reserve board are paid as if holding a five-day assignment. The seven-day period would include five days of pay and two "rest days".

UNION PACIFIC EXHIBIT 33
PAGE 23 OF 28

XI. Other employment while on the regular reserve board is permissible and there shall be no offset for outside earnings. Other employment includes all employment except that employment which would conflict with the best interests of Union Pacific. If an employee is concerned whether employment conflicts with the best interests of Union Pacific, the General Director of Labor Relations should be contacted.

Note: Employees on the regular reserve board shall be eligible to accept "borrow out" status at other locations on Union Pacific. Borrow out status shall last no longer than six months without renewing the borrowed out status with CMS and the General Chairman.

XII. Vacation pay received while on a reserve board will offset reserve board pay. Time spent in reserve status will not count toward determining whether the employee is eligible for vacation in succeeding years, but will be counted as compensation earned towards vacation pay. It will count in determining the length of vacation to which an employee, otherwise eligible, is entitled.

XIII. Employees on the reserve board are not eligible for Holiday pay, Bereavement Leave, Jury Pay and all other similar allowances except employees on the ready reserve board will be eligible for personal leave.

XIV. Employees in reserve status are covered by Health and Welfare Plans, Union Shop, dues check off, discipline rules and the grievance procedures that are applicable to employees in active service.

XV. It is understood that the reserve boards (both ready and regular) will not operate when all eligible employees on the appropriate seniority roster on the date of this agreement are placed on either a guaranteed extra board position or a regular assignment.

August 6, 1997
Side Letter No. 1

Gentlemen:

This refers to our negotiations modifying the SP-West UTU collective bargaining agreement and that portion dealing with protection offsets when not working. These offsets were set forth in the Questions and Answers. During our discussions the UTU pointed out that current agreements permit Local Chairpersons to layoff of pool turns and the extra board to handle union business and to hold their turns and if they move to first out they are held first out until they mark up again. It was the UTU's position that the offsets for pool layoffs and extra board layoffs should not be the same for those Local Chairpersons who hold their turn as compared to regular employees who are not governed by these same conditions.

In recognition of the difference it was agreed that Local Chairpersons who lay off Union Business would be deducted 1/30 for each 24 hour period or part thereof laid off until marked back up when holding pool or extra board assignments and they hold their turns. If they do not hold their turn then the regular offset provisions will apply.

Should the above properly reflect our understanding please sign below.

Yours truly,

W. S. Hinckley

W.S. Hinckley
General Director Labor Relations

Agreed:

General Chairman UTU

Daniel E. Johnson

Vice President UTU

UNION PACIFIC EXHIBIT 33
PAGE 25 OF 28

180

August 6, 1997
Side Letter No. 2

Gentlemen:

In our SP-West UTU Collective Bargaining Agreement modifications we created a new form of wage protection called "Crew Consist Protection" in Article II (F). The question arose in negotiations concerning the status of this protection since most protection is regulatory, i.e. New York Dock, Mendicino, Oregon Short Line, etc or National, i.e. Article IX Interdivisional Protection.

We agreed that the "Crew Consist Protection" carries the same force and affect as the other types of protection. We emphasized this in Question and Answer No. 13 which allows an employee to select "Crew Consist Protection" over New York Dock protection in merger areas. The same would be true in the future if a transaction provided some type of protection, such as Mendicino, an employee covered under "Crew Consist Protection" would have to elect between keeping this protection or accepting the protection under the new transaction.

Should the above properly reflect our understanding please sign below.

Yours truly,

W S Hinckley

W.S. Hinckley
General Director Labor Relations

Agreed:

General Chairman UTU

Daniel E. Johnson
Vice President UTU

utuspwestagmt08/06/97

181

August 6, 1997
Side Letter No. 3

Mr. Kevin Klein
General Chairman, UTU
1860 El Camino Real, Suite 201
Burlingame, California 94010

Dear Sir:

This refers to Article II (G) of the SP-West UTU modification agreement. During our discussions you raised the issue of three legislative representatives and one international officer. It was your position that all four of these individuals should be covered under that section of the agreement should they return to active service with the carrier.

It was agreed that the matter would be settled in a manner consistent with your position and without prejudice to either parties' respective position regarding the status of legislative representatives and international officers.

Yours truly,

W S Hinckley

W. S. Hinckley
General Director Labor Relations

Agreed:

General Chairman, UTU

To: William S. Hinckley
cc:
From: JOSEPH K. KLEIN
Date: 10/19/97 08:52:03 AM
Subject: Modification of the UTU (SP West) CBA

To: RDMEREDI--NOTES Richard D. Meredit WSHINCKL--NOTES William S. Hinckle

From: Kevin Klein
General Chairperson
UTU UP(SP-West) Trainmen & Switchmen
Subject: Modification of the UTU (SP West) CBA
Gentlemen:

This is to advise that the proposal to modify the United Transportation Union (SP West) collective bargaining agreement had been approved by the membership.

This note will serve as the required notice from UTU to UP for the purpose of implementation as set forth in Article XII of the modification agreement.

Please proceed with the implementation advising this committee of the process accordingly.

Kevin Klein
415/692-8888 - Fax 415/692-6769
E-mail: UTUGO887@aol.com ** PROFS: OPUJKK

MERGER IMPLEMENTING AGREEMENT
Southwest Territory
(Arizona, El Paso and Dalhart Hubs)

between the

UNION PACIFIC
SOUTHERN PACIFIC TRANSPORTATION COMPANY
And
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 common seniority districts covered under a single, common collective bargaining agreement.

IT IS AGREED:

I. Southwest Territory

A. The Southwest Territory shall be comprised of three separate hubs – Arizona, El Paso and Dalhart.

B. The Southwest territory shall encompasses the following area: the territory from milepost 292.33 East of Pratt Kansas westward to milepost 731.5 West of Yuma, Arizona: BNSF trackage rights to Childress (not including) and Lubbock (including) that connect to this line; and the lines from El Paso to Alpine (not including) and Toyah (not including) and shall include all main and branch lines, industrial leads and stations between the points identified.

NOTE: Employees with a home terminal within any of the three hubs (Arizona, El Paso or Dalhart) may work to points outside their hub without infringing on the rights of any other employee in other hub. Employees from outside any of the three hubs may work to points within those three hubs without infringing on the rights of any employee within those hubs. The three

UNION PACIFIC EXHIBIT 34
PAGE 1 OF 52

hubs identify the on duty points for assignments and not the boundaries of assignments. (This note is further explained in Side letter No. 2)

II. **Seniority and Work Consolidation.**

The following seniority consolidations will be made:

A. The Southwest Territory shall be divided into three hubs as follows:

1. Arizona - The territory between Yuma (including) and Lordsburg (not including).

2. El Paso - The territory between Lordsburg (including) and Alpine (not including), Toyah (not including) and Vaughn (not including).

3. Dalhart - The territory between Vaughn (including) and Pratt (including), Childress (not including) and Lubbock (including).

B. New seniority districts will be formed and combined switchman, conductor, brakeman, fireman and hostler rosters shall be created for the employees on the current SP (SSW/SPEL/SPWL) seniority rosters and on the current UP seniority rosters and who are assigned and working in either the Arizona, El Paso or Dalhart Hub on implementation date or on an SP region system board from a point within one of the hubs but working outside the three hubs or UP employees borrowed out to other locations that will return to one of three hubs upon release. This does not include borrow outs to any of the three hubs. Employees who are furloughed shall be placed on rosters in the Hub where they were working at the time of furlough. (The term "employees" is used throughout as a generic term to include all UTU-C,T,&Y/T&S represented employees and, where applicable, all UTU-E represented employees.)

C. There may be some SPEL and SSW employees who have held their seniority in abeyance pending the formulation of the final Hubs. These employees will now be required to exercise that seniority in either the Dalhart or El Paso Hubs as appropriate or by default become a permanent trainman in the Hub now working. The exercise of that seniority is based on the ability to hold a position . The Organization and the Carrier will agree on the cap for each zone and the entire Hubs.

D. The new seniority rosters for each hub will be created as follows:

1. Arizona Hub - All former SPWL employees working or furloughed in the hub on the day of implementation of this Agreement shall be listed in the same position as they now are listed with respect to all other employees who remain in the hub. This will apply for all rosters in the Arizona Hub.

2. El Paso Hub – This hub shall be comprised of three zones. Zones 1 and 2 shall have the top part of their roster prior righted with the other zone roster then placed on the bottom. An employee will only have prior rights in one of the two road zones.

   Zone 1 – Road Service El Paso-Lordsburg and El Paso-Vaughn
   Zone 2 – Road Service El Paso-Toyah/Alpine
   Zone 3 – Yard service El Paso

   a. For Zone1 (road service El Paso-Lordsburg and El Paso-Vaughn), combined conductor and brakeman rosters shall be constructed by dovetailing SPWL (Tucson and Rio Grande seniority districts) brakemen and conductors using each employee's earliest retained UTU brakemen's and conductor's date. (SP switchmen with seniority prior to 9/21/72 will be placed on the list using their 9/21/72 date)

   b. For Zone 2 (road service El Paso-Toyah/Alpine), a combined conductor's roster shall be established in the following manner:

      i. A temporary list will be constructed by dovetailing UP and SPEL brakemen using each employee's earliest retained UTU brakeman's date. Only brakemen and switchmen promoted to conductor will be included on this temporary list. This temporary list will be used as a template to determine the designation (SPEL or UP) of each position (slot) on the combined El Paso Hub conductor zone 2 roster. Slots on the combined El Paso Hub conductor zone 2 roster will be allocated (UP or SPEL) according to the corresponding position on this brakeman list.

      ii. For the purpose of placement on the combined conductor's roster two lists will be made. The lists will be as follows :

      1) All SPEL conductors by earliest retained UTU conductor's date.

      2) All UP conductors by earliest retained UTU conductor's date.

iii. The two conductor lists (UP and SPEL) in item ii above will be used to fill the combined conductor roster slots. If slot 1 on the combined roster is UP and slot 2 is SPEL then the first conductor on the UP conductor list is placed on slot 1 and the first conductor on the SPEL conductor list is placed on slot 2. This shall continue until all conductors are placed on the roster.

iv. Once placed on the roster, the order of employees shall be maintained.

c. For Zone 2 (road service El Paso-Toyah/Alpine), the combined brakemen's roster shall be constructed by dovetailing UP and SPEL brakemen using each employee's earliest retained UTU brakemen's date.

d. Zone 1 and zone 2 rosters shall now be top and bottomed

e. For Zone 3 (yard service El Paso), a combined switchman's roster shall be established for the El Paso Hub (Zone 3) by dovetailing UP, SPEL and SPWL switchmen using each employee's earliest retained UTU switchman's date.

f. All employees hired after July 1, 1999 shall be placed on the bottom of the rosters of all three zones without any prior rights. (Employees hired after July 1, 1999 and prior to implementation shall have their seniority date established per the SPWL CBA to avoid later confusion when the rosters are formulated, based on differing CBA provisions.)

g. All employees placed on any El Paso Hub roster may work all assignments protected by those rosters in accordance with their seniority. Prior rights employees may only be forced to assignments outside their prior rights zone so long as the home terminal of the forced assignment is El Paso. Post implementaion employees may be forced to any assignment protected by an El Paso roster.

EXAMPLE: A Zone 2 prior right employee may be forced to any assignment in their zone, to any yard assignment in El Paso and any Zone 1 assignment that has a home terminal in El Paso such as the pools to Lordsburg and Vaughn. They would not be forced to the Clifton locals at Lordsburg.

h. A combined fireman's dovetailed roster for UP, SPEL and SPWL firemen shall be created for the El Paso Hub. The combined roster shall apply to Zone 3. SPWL firemen shall be ranked first on the

Zone 1 roster followed by dovetailed UP and SPEL firemen. Dovetailed UP and SPEL firemen shall be ranked first on the Zone 2 roster followed by the SPWL firemen. All employees hired after July 1, 1999 shall be placed on the bottom of the rosters of all three zones without any prior rights. (Employees hired after July 1, 1999 and prior to implementation shall have their seniority date established per the SPWL CBA to avoid later confusion when the rosters are formulated, based on differing CBA provisions.) Employees entering engineer training prior to the implementation of this merger Agreement shall complete their training pursuant to the agreement under which they entered training.

3. Dalhart Hub – Except as provided in the Tucumcari Agreement, all former SPWL and SSW employees in the Dalhart Hub on the date of implementation of this Agreement shall be dovetailed for all rosters.

E. If any of the processes used to create the new seniority rosters for the Arizona, El Paso and Dalhart Hubs results in employees having identical seniority dates, seniority ranking will be determined by the employee's earliest retained hire date with the carrier.

F. It is possible that an employee will have two dates due to work on two or more different rosters. In this case an employee will be allowed to use the oldest retained service date (SP or UP) that involves work in the Zone or Hub. Regarding firemen rosters, placement thereon will be based upon each employee's earliest date of entry into the craft.

G. Employees placed on either the Arizona, El Paso or Dalhart rosters (and an employee may be placed on rosters for only one hub) shall relinquish all seniority outside the new hub upon implementation of this Agreement and all seniority inside each of the three hubs held by employees outside the hubs shall be eliminated. When an employee places in the Hub from the inactive roster, the employee will be placed on the roster in their proper order as if they had participated in the roster formulation described above at time of implementation

H. Employees who are on an authorized leave of absence or who are dismissed and later reinstated will have the right to displace to the appropriate roster, provided his/her seniority at time of displacement would have permitted him/her to hold that selection. The parties will create an inactive roster in each hub for all such employees until they return to service at which time they will be placed on the appropriate seniority rosters and removed from the inactive roster. Engineers with an engineer's seniority date prior to January 1, 1998 shall be placed on the inactive roster.

I. Specific and Unchanged Assignments

1. Assignments at Yuma and El Centro (Imperial Valley) protected by the West Colton source of supply shall be governed as follows:

   a. The assignments shall be prior righted to SP employees holding seniority in the Hub on the day the LA Hub agreement is implemented.

   b. If an assignment goes no bid/application then it shall be filled by an employee from the Arizona Hub. LA Hub SP prior right employees shall have bid/application rights to vacancies on these assignments and shall not have displacement rights to them if they are held by an employee from the Arizona Hub unless the assignment LA Hub employees displace from is an Imperial Valley assignment.

2. All other assignments at Yuma shall remain Arizona Hub assignments. Through attrition, all Yuma and El Centro assignments shall become Arizona Hub assignments.

3. Employees who are on assignments that are not changed on the day of implementation shall remain on those assignments unless they make application to another vacancy or are displaced by employees with displacement rights under the controlling CBA. This Agreement does not create displacement rights due to its implementation.

III. POOL OPERATIONS/ASSIGNED SERVICE

The following operations may be instituted:

A. Dalhart - Childress/Lubbock/Amarillo via Dalhart or Stratford as one pool with Dalhart as the home terminal.

B. Dalhart – Vaughn with Dalhart as the home terminal.

NOTE: Tucumcari - Vaughn and Dalhart - Tucumcari shall continue to operate as separate pools until the final movement of the home terminal to Dalhart.

C. Dalhart-Springfield with Dalhart as the home terminal.

D. El Paso - Vaughn with El Paso as the home terminal.

E. El Paso - Toyah/Alpine as one pool with El Paso as the home terminal. The Carrier will not give notice to combine the pools until either the new lodging

facility is built at Toyah or the pool's away from home lodging is at Pecos. Crews will not be deadheaded between Toyah and Alpine for return trips.

F. El Paso - Lordsburg with El Paso as the home terminal.

G. Tucson - El Paso with Tucson as the home terminal.

H. Tucson - Lordsburg with Tucson as the home terminal.

I. Tucson - Nogales/Phoenix as one pool with Tucson as the home terminal. Through freight pool service to Nogales shall be run in turnaround service with no away from home lodging. Tucson pool crews working to Nogales and return shall be paid in combination service if they perform deadhead and service in the same tour of duty. Through freight service to Phoenix may be run as either turnaround or straightaway service on a trip by trip basis.

J. Tucson - Yuma with Tucson as the home terminal.

K. Phoenix - Yuma with Phoenix as the home terminal.

L. Dalhart-Pratt with Dalhart as the home terminal, subject to the arrangements set forth in Side Letter No. 4.

M. Any pool freight, local, work train, hostler or road switcher service may be established in accordance with the controlling CBA.

N. None of the Employees in (A) through (L) above shall be restricted, in or between the terminals of their assignment, as to where they may set out or pick up cars or leave or receive their train. The type and amount of work shall be governed by the controlling CBA. All Employees may operate over any and all tracks and alternate routings between locations.

O. New pool operations not covered in this implementing Agreement between Hubs or within a Hub will be handled per Article IX of the 1985 National Agreement.

P. The different pools identified in this Agreement may be established individually or in groups. If not established at time of implementation they shall be established upon ten days written notice to the General Chairperson. Existing pools will remain in place until replaced by new pools.

IV. EXTRA BOARDS

A. Train service extra boards will be established at the following locations:

1. Dalhart – (road) Except for any extra board work between Pratt and Liberal Kansas, this extra board will cover the remainder of the Dalhart Hub, turnaround hours of service relief for trains heading to

UNION PACIFIC EXHIBIT 34
PAGE 7 OF 52

Dalhart from all directions (including those from Pueblo that have reached Springfield). This board will also protect any yard service vacancies in the territory involved.

2. Pratt – (road) This extra board will cover all of the area between Pratt (including) and Liberal (including) Kansas and turnaround hours of service relief for trains heading to Pratt from all directions. (Turnaround HOS work from the East shall be no further than Inman on the UP line and Ellinore on the trackage rights line)This board will also protect any yard service vacancies in the territory involved.

3. El Paso – (yard) This extra board will cover the El Paso Terminal.

4. El Paso Northwest– (road) This extra board will cover the area between El Paso and Vaughn (not including) and Lordsburg (including) and the assignments that go on duty in El Paso that work in these two directions and turnaround hours of service relief for trains heading to El Paso from these directions.

5. El Paso East – (road) This extra board will cover the area between El Paso and Toyah(not including) and between El Paso and Alpine (not including), except as provided in Section 11. below, the assignments that go on duty in El Paso that work in these two directions, and turnaround hours of service relief for trains heading to El Paso from these directions.

6. Tucson (yard) – This extra board will cover the Tucson terminal and any yard assignments which may be established at Nogales..

7. Tucson (road) – This extra board will cover the area between Lordsburg (not including), Gila Bend (including) and Nogales (including) and the assignments that go on duty in Tucson that work in these directions and turnaround hours of service relief for trains heading to Tucson from these directions.

8. Phoenix (yard) – This extra board will cover the Phoenix terminal.

9. Phoenix (road) – This extra board will cover the area between Picacho (not including) and Hyder (not including) and the assignments that go on duty in Phoenix that work in these directions and turnaround hours of service relief for trains heading to Phoenix from these directions.

10. Yuma (road) – This extra board will cover the area between Niland (including all the El Centro branch), Gila Bend (not including) and Hyder (including) and turnaround hours of service relief for trains

heading to Yuma from these directions but no further West than Niland.

11. Alpine (road) – to cover hours of service relief for trains heading to Alpine that are within 65 miles of Alpine and all other non pool assignments in this area. The San Antonio Hub shall protect the odd numbered assignments and the El Paso hub shall protect the even numbered assignments.

B. The Carrier shall give ten days notice of the creation of each extra board if not given at the time of notice of implementation of this agreement. The Carrier shall give ten days notice of the discontinuance of any pre-merger extra boards that are not discontinued at the time of implementation of this agreement. Notice may be given individually or for more than one extra board.

V. TERMINAL AND OTHER CONSOLIDATIONS

A. The several yards at El Paso shall be combined into a single terminal. Yard Employees shall not be restricted as to where in the terminal they can operate. The new terminal/switching limits shall be as follows:

SUBDIVISION/LINE		MILEPOST
Valentine		**820.0**
Lordsburg		**1291.54#1** **1319.87#2**
Carrizozo		**1300.54**

B. The provisions of A above will not be used to enlarge or contract the current limits except to the extent necessary to combine into a unified operation.

C. With the implementation of this Agreement all areas, trackage, stations and facilities in each of the hubs shall be common to all employees working in their respective hub as a single unified system. Employees shall not be restricted within a hub as to where they can operate except on the basis of CBA provisions that set forth limits of an assignment such as the radius of a road switcher.

D. Road crews may receive/leave their trains at any location within the consolidated terminals and may perform work within the terminals pursuant to the controlling collective bargaining agreement, including National Agreement provisions.

E. Carrier will designate the on/off duty points for all road and yard crews. Such on/off duty points will have appropriate facilities as currently required by the controlling collective bargaining agreement and/or by governmental statute or regulation.

VI. AGREEMENT COVERAGE

A. 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 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. The Carrier shall designate the on/off duty points for Employees.

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 Employees at any location within a Hub may perform such service in all directions out of their terminal.

4. SPEL and SSW trainmen who have earned their vacation for the year 2000 in 1999 shall be allowed to take the number of weeks provided in their current vacation agreement for the year 2000.

5. SPEL/SSW trainmen shall be entitled to exercise personal leave buy back provisions for the calendar year 1999 (after November 1, 1999) whether or not they are still covered by the former SPEL/SSW contract at year end.

B. **General Conditions for Pool/Assigned Operations in Article III.**

1. The terms and conditions of the pool operations set forth in Article III (A-L) shall be the same except where specifically provided otherwise in those Sections. The terms and conditions are those of the surviving collective bargaining agreement as modified by subsequent

national agreements, awards and implementing documents and those set forth in this Agreement.

2. **Twenty-Five Mile Zone** - Pool employees may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Employees shall be paid an additional one-half (½) 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: An El Paso-Vaughn crew receives their westbound train fifteen (15) miles east of Vaughn and runs to El Paso. They shall be paid the actual miles established for the El Paso - Vaughn run and a minimum of an additional one-half basic day for handling the train from the point fifteen (15) miles east of Vaughn back through that terminal. (See Q&A's for additional information.)

3. **Turnaround Service/Hours of Service Relief**. Except as provided in (2) above, turnaround hours of service relief at both home and away from home terminals shall be handled by extra boards, if available, prior to using pool employees in turn around service. Employees used for this service may be used for multiple trips in one tour of duty in accordance with the surviving CBA. Extra boards may handle this in all directions out of a terminal. At El Paso where there is more than one road extra board, the extra boards shall protect their primary road area of coverage for this service; however, in an emergency, employees from one road extra board may be used to protect service covered by another road extra board. At away from home terminals, if pool crews are used for hours of service relief due to unavailability of extra men, they will be placed first out for the next straight away trip (or deadhead) to their home terminal and will not be used for a second hours of service relief or turnaround if other crews (extra or regular) are rested and available.

4. Nothing in this Section B (2) and (3) prevents the use of other employees to perform work currently permitted by prevailing agreements, including, but not limited to yard employees performing Hours of Service relief within the road/yard zone, ID employees performing service and deadheads between terminals, road switchers handling trains within their zones and using an employee from a following train to work a preceding train and payments required by the controlling CBA shall continue to be paid when this work is performed.

5. Employees, both pool and extra board, when called in turnaround hours of service relief, shall be considered called as in combination deadhead/service and shall be paid as such.

C. **Agreement Coverage** – Employees working in the Arizona, El Paso and Dalhart Hubs shall be governed, in addition to the provisions of this Agreement, by the Collective Bargaining Agreement selected by the Carrier, including all addenda and side letter agreements pertaining to that agreement 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.The Carrier has selected the SP West modified UTU Agreements.

1. The Carrier will provide copies of the designated collective bargaining agreement to those employees who do not have a copy at the earliest possible date, but no later than by date of implementation of this Agreement.

D. Other Provisions

1. **Overtime** - Employees who have an engine/train service seniority date prior to October 31, 1985 shall begin overtime at the expiration of eight (8) hours for those through freight runs that are one hundred sixty miles or less and on runs in excess of one hundred sixty miles overtime will begin when the time on duty exceeds the miles run divided by twenty, or in any case, when on duty in excess of ten hours. When overtime, initial terminal delay and final terminal delay accrue on the same trip, allowance will be the combined initial and final terminal delay time or overtime, whichever is the greater. Employees hired after October 31, 1985 shall be paid overtime in accordance with the National rules governing same and in the same manner previously paid on the Union Pacific prior to the merger.

2. **Personal Leave** - Requests for personal leave day(s) will be granted or rejected at the time requested. If granted, the day(s) will commence at the time granted and the employee's mark up for return to service will be pended in increments of twenty-four (24) hours from that time depending on the number of days granted. Other than the extra board rest day and union business layoffs, employees must take all personal leave days to which entitled before they will be permitted to take a non-compensated lay off day.

NOTE: Non-compensated does not refer to absences due to a disability that is covered by Railroad Retirement Disability benefits or

CBA group insurance benefits.

3. **Rest Day** - Employees who are New York Dock or SP/UP crew consist protected, who are on guaranteed extra boards shall be entitled to one (1) rest day (a 24-hour period or portion thereof) during the pay period for which no deduction in their New York Dock or crew consist protection shall be made subject to the following conditions:

   a. At the time of the rest day, the employee must be other than first out.

   b. The rest day must be taken at any time commencing 12:00 noon Monday and concluded by 11:59PM Thursday.

   c. The rest day cannot exceed twenty-four hours.

   d. The rest day will be considered an absence for Guarantee Extra Board purposes and appropriate deduction will be made from that guarantee.

4. **Application Process** - Rules governing the advertising of assignments, both road and yard, are modified as follows: Vacancies on existing positions shall be filled through the application process. Employees may submit multiple standing applications. The senior employee with an application on file will be assigned to the vacancy and all other lesser applications shall be automatically withdrawn. New applications may be submitted at any time and applications for a job may be withdrawn by the submitting employee at any time prior to filling a vacancy for that position. Newly created positions (other than on existing pools and extra boards) will continue to be advertised for bids when first established in accordance with the controlling collective bargaining agreement. The senior employee making application for such positions shall be assigned.

5. **First-In/First-Out** - Employees in pool freight service will operate and/or deadhead on a first-in/first-out basis. Provisions providing for special placement after deadheading or laying off are eliminated.

6. **Displacement** - Employees with displacement rights exercising in pool freight service must displace the junior employee in the pool and will assume that position on the Board.

7. **Held Away from Home Time**- Employees in all pool freight service shall be governed by the current SP West HAHT provisions for Interdivisional Service.

VII. PROTECTION.

A. Due to the parties voluntarily entering into this agreement the Carrier agrees to provide New York Dock wage protection (automatic certification) to all prior right employees who are listed on either an Arizona, El Paso or Dalhart Hub roster and working an assignment (including a Reserve Board) or furloughed on July 1, 1999. (The term working shall also include those employees disciplined and later returned to work and those full time Union Officers should they later return to service with the Carrier.) This protection will start with the effective (implementation) date of this Agreement. The provisions of Attachments "B" and "F" (August 6, 1997 letters) to the SP West Modification Agreements, Q&As relating to TPAs and Side Letter No. 1 to this Agreement shall be applicable to TPAs determined under this agreement. Employees who elect to retain protection under another agreement shall use the TPA as provided in that agreement. The employees must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc. Protection offsets due to unavailability are set forth in the Questions and Answers and Side Letter #1.

B. This protection is wage only and hours will not be taken into account.

C. Employees required to relocate under this agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, employees required to relocate may elect one of the following options:

1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of $10,000 upon providing proof of actual relocation.

2. Homeowners may elect to receive an "in lieu of" allowance in the amount of $20,000 upon providing proof of actual relocation.

3. Homeowners in Item 2 above, who provide proof of a bona fide sale of their home at fair value at the location from which relocated, shall be eligible to receive an additional allowance of $10,000.

   (a) This option shall expire five (5) years from date of application for the allowance under Item 2 above.

   (b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

4. With the exception of item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this agreement.

5. Employees receiving an "in lieu of" relocation allowance pursuant to this implementing agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

6. Under no circumstances shall an employee be permitted to receive more than one (1) "in lieu of" relocation allowance under this implementing agreement or other relocation agreement concurrent with this agreement.

7. Seniority relocations from Yuma to Phoenix and Tucson shall be treated as required to relocate.

D. There will be no pyramiding of benefits.

E. Employees who were employed after the year 1995 shall use the twelve month period prior to implementation for determining their TPA. SPEL and SSW Employees currently covered by an interim protection TPA shall use that TPA as adjusted in Side Letter No. 10. UPTP and SPEL Employees without interim protection, who were hired into train service prior to January 1, 1996 shall use calendar year 1996 for determining their TPA as adjusted in Side Letter No. 10. SPWL employees with an interim protection shall retain that TPA. The TPA for union officers will be based on the two employees above and two employees below the officer with regular work records on the pre-merger roster or their regular TPA, whichever is larger.

F. Employees will be treated for vacation, payment of arbitraries and personal leave days as though all their service on their original railroad had been performed on the merged railroad. Employees assigned to an Arizona, El Paso or Dalhart Hub seniority roster with a seniority date prior to July 1, 1999 shall have entry rate provisions waived and employees hired after that date shall be subject to the rate progression provisions of the controlling CBA. Those employees leaving the Southwest Territory will be governed by the CBA where they then work.

G. National Termination of Seniority provisions shall not be applicable to employees hired prior to the effective date of this Agreement.

VIII. FAMILIARIZATION

A. Employees involved in the consolidation of the Arizona, El Paso and Dalhart Hubs covered by this Agreement whose assignments require performance of duties of a new geographic territory not familiar to them will be given familiarization opportunities as quickly as possible. Employees will not be required to lose time or ride the road on their own time in order to qualify for these new operations.

B. Employees will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. If disputes occur under this Article they may be addressed directly with the appropriate Director of Labor Relations and the General Chairperson for expeditious resolution.

IX. CREW CONSIST

A. Except as provided below, the crew consist agreement of the CBA selected by the Carrier shall govern all employees in the Arizona, El Paso and Dalhart Hubs. The governing CBA does not provide for special allowances and/or productivity funds and no one shall be entitled to any such payment even if previously paid one under a different CBA. The current productivity funds shall be frozen at time of implementation and the proceeds paid out in a normal manner to those pre implementation participants.

B. The UPTP employees who are currently entitled to share in the UP productivity fund distribution shall be handled in accordance with the provisions of Side Letter No. 3. SPEL and SSW employees with a trainman's seniority date prior to November 29, 1988 shall be handled in accordance with Side Letter No. 10.

C. Employees with a trainman's date on or prior to January 30, 1998 shall be eligible to hold a reserve board.

D. There will be a total of five (5) reserve boards in the territory covered by this agreement, i.e., one (1) in the Arizona Hub, three (3) in the El Paso Hub (one for each prior rights zone), and one (1) in the Dalhart Hub. Employees with reserve board rights must displace non-reserve board right employees from positions that they are required to cover, prior to placing on a reserve board.

X. IMPLEMENTATION

A. The Carrier will give at least thirty (30) days written notice of its intent to implement this Agreement.

B. 1. After notice of acceptance of this agreement, the appropriate Labor Relations Personnel, CMS Personnel, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. At this workshop, the representatives of the Organization will participate with the Carrier in constructing consolidated seniority rosters as set forth in Article II of this Implementing Agreement.

2. Dependent upon the Carrier's manpower needs, the Carrier may develop a pool of representatives of the Organization, with the concurrence of the General Chairmen, which, in addition to assisting in the preparation of the rosters, will assist in answering trainmen's questions, including explanations of the seniority consolidation and implementing agreement issues, discussing merger integration issues with local Carrier officers and CMS or the assignment of trainmen to positions.

3. The roster slotting workshop will be held in Omaha and implementation agreement issues will be handled in the field.

C. Upon implementation the Carrier may begin consolidating extra boards and pools and relocating employees as provided elsewhere in this agreement.

D. Upon implementation but prior to pools being combined, such as El Paso to Alpine/Toyah, the Carrier may call the first out SP and first out UP Employee to go together, over the entire run, for familiarization purposes in addition to using other methods.

E. After all assignments are made, trainmen assigned to positions which require them to relocate will be given the opportunity to relocate within the next thirty (30) day period. During this period, the affected trainmen may be allowed to continue to occupy their existing positions. If required to assume duties at the new location immediately upon implementation date and prior to having received their thirty (30) days to relocate, such trainmen will be paid normal and necessary expenses at the new location until relocated. Payment of expenses will not exceed thirty (30) calendar days.

F. The Carrier may at its option, elect to phase-in the actual pool and extra board consolidations which are necessary in the implementation of this

agreement. Trainmen will be given ten (10) days' notice of when their specific relocation/reassignment is to occur.

XI. HEALTH AND WELFARE

A. Employees currently are under either the National Plan or the Union Pacific Hospital Association. Employees coming under a new CBA will have six months from the implementation of this agreement to make an election as to keeping their old coverage or coming under the coverage of their new CBA. Employees who do not make an election will have been deemed to elect to retain their current coverage. Employees hired after the date of implementation will be covered under the plan provided for in the surviving CBA.

B. If an employee is covered under a group life and/or disability insurance policy provided for in his/her collective bargaining agreement and that collective bargaining agreement is not the surviving collective bargaining agreement, the Carrier shall continue the premium payments required at the time of implementation of this agreement for those employees presently covered under those provisions for a period of six years, beginning January 1, 1998.

This Agreement is entered into this 23rd day of June 1999.

For the Organization:

General Chairperson UTU UP

General Chairperson UTU SPWest

General Chairperson UTU SSW

General Chairperson UTU SP East Road

General Chairperson UTU SP East Yard

For the Carrier:

General Director Labor Relations

Assistant Vice President Southern Region

General Director Labor Relations

201

General Chairperson UTU-E

M.B. Futhey Jr.
Vice-President UTU

P.C. Thompson
Vice-President UTU

UNION PACIFIC EXHIBIT 34
PAGE 19OF 52

208

June 23, 1999
Side Letter No. 1

Gentlemen:

During our discussions on New York Dock and Crew Consist Protection we discussed the issue of a pool employee taking a single day paid absence such as a Personal Leave day or single day vacation and the impact it will have on his/her protection. In an effort to simplify the process and to provide the pool employee with an alternative the parties agree that a pool employee shall have one of the following options:

(1) Elect a single paid personal leave or vacation day and hold their turn so that if it obtains a first out status they will be first out when they are marked up no less than 24 hours later, with no deduction from their protection; or

(2) Elect a minimum of two consecutive days paid personal leave days on pools whose round trip district miles are 400 or less or a minimum of three consecutive days on pools whose round trip district miles are more than 400 miles and not hold their turns. If the minimum number of consecutive days are met for each round trip, then no deduction will be made in their protection.

Question #1: If the round trip district miles of a run are 390 miles and initial and or final terminal delay make a payment over 400 miles how many personal leave days must be used.

Answer #1: Only the district miles are used for determining the number of personal leave days to be used. In this case two personal leave days would qualify for no deduction.

Question #2: If the round trip district miles are over 400 miles how is a deadhead counted.

Answer#2: Deadheads are already taken into account by using a 1/15th offset for pools. Since most pools do not average 15 round trips per month a 1/15th offset is less than using the average for each pool. As a result the round trip district miles are used for determining the number of personal leave days that would substitute for no offset and in this case three personal leave days would qualify.

(3) Elect a single paid personal leave or vacation day and not hold their turn resulting in payment of a single day with a corresponding 1/15th deduction from protection.

The option must be selected by the employee at the time the personal leave or vacation day is granted. Employees must file the protection form each time they take paid days in accordance with the above options.

Yours truly,

W. S. Hinckley
General Director Labor Relations

Agreed:

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

UNION PACIFIC EXHIBIT 34
PAGE 21OF 52

June 23, 1999
Side Letter No.2

Gentlemen:

During negotiations the parties spent considerable discussion concerning the intent and meaning of the NOTE in Article I. It was agreed that further detail would be provided in a side letter explaining how different types of operations would be affected. The following is meant to give further definition to the NOTE:

Road Switchers: Road Switcher agreements in the controlling CBA provide for a 25 mile limit unless specifically provided otherwise. A road switcher that goes on duty inside the Hub or zone, would be governed by the 25 mile provisions even though the 25 miles would take the assignment into the adjoining Hub or zone. For example, a road switcher at Pratt (Dalhart Hub assignment) could operate 25 miles into another hub.

Locals on duty inside the Hub: Current locals that go on duty inside a hub may continue to operate to points outside the Hub. New locals that operate in more than one Hub shall be established in accordance with Article IX of the October 31, 1985 National Agreement.

Locals on duty outside the Hub: Current locals that go on duty outside a hub may continue to operate to points inside that hub. New locals that go on duty outside a hub and operate into that hub shall be established in accordance with Article IX of the October 31, 1985 National Agreement.

Current Pools and Pools established by Merger Agreements: These pools may operate between their designated terminals even if outside the hub. They may operate up to 25 miles beyond the terminal when picking up a train in accordance with the 25 mile provisions of Article VI.

New Pools created after this Agreement: New pool operations not covered in this implementing Agreement whether between hubs or within a hub shall be handled per Article IX of the 1985 National UTU Agreement.

Operations (including, but not limited to, yard assignments, road switchers, locals, work train or pools) may operate into out of, through, between and among the various zones of the El Paso Hub.

Yours truly,

W.S. Hinckley

UNION PACIFIC EXHIBIT 34
PAGE 22 OF 52

Agreed:

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

June 23, 1999
Side Letter No. 3

Dear Sir:

This refers to Article IX B wherein the parties agreed to set forth in a side letter the details covering the handling of UP crew consist protected employees currently entitled to share in the productivity fund once the Southwest Territory Merger Agreement is implemented. In keeping with that Article the following shall govern:

1. The Carrier shall continue to make productivity fund plugs for all trips up to close of business the day before implementation day.

2. On implementation day the fund shall be frozen and the proceeds paid out in the normal and usual manner based on the trip credits up to implementation day.

3. The value of a trip credit at the close of the 1999 productivity fund year shall be used to determine each covered employee's trip credit payment in future years. This payment shall be subject to future wage and cola increases.

4. In February, each covered employee shall receive an amount equal to the number of trip credits earned in the previous calendar year as determined by the crew consist agreement multiplied by the 1999 trip credit value as adjusted for future increases.

   Example: At the close of the 1999 productivity fund year the trip credit value is $30.00. The Southwest Territory Merger Agreement is implemented on October 1, 1999. A covered employee shall share in the productivity fund for the period from October 1, 1998 (the beginning of the new fund year) to September 30,1999. This distribution will be made at the regular time as provided in the agreement. During the period between October 1, and December 31, 1999 the employee earns 60 trip credits In February 2000, the employee will receive a payment of $1800.00 ($30 x 60) In the calendar year 2000 the employee earns 400 trip credits and in February 2001 the employee shall receive a payment of $12,000.00.

5. Productivity fund payments are not included in an employee's New York Dock TPA and post merger implementation trip credit payments are not used as an offset to the TPA.

6. Upon retirement or resignation an employee shall be paid their final payment for trip credits earned in the last year within 60 days of leaving the service.

7. These payments are individual payments and no group fund is created. When an employee leaves the Carrier's service these payments cease for that employee and are not shared by other employees.

NOTE: Special allowances are also eliminated, however they have been included in the TPA of the employees.

Yours truly,

W.S. Hinckley

Agreed:

General Chairperson UTU – T&P

June 23, 1999
Side Letter No. 4

Gentlemen:

During negotiations the parties spent considerable discussion concerning the application of Article III. L. and the phasing out of the home terminal of the Pratt pool turns from Pratt to Dalhart.

The agreement establishes the home terminal of the pool at Dalhart but contemplates that employees who were continuously working and residing at Pratt or vicinity from the date notice was served to begin negotiation (notice dated March 24, 1999) to the date of implementation may continue to maintain their residences at that location so long as pool freight service between Dalhart and Pratt and extra board work at Pratt continues to exist and such employees possess sufficient seniority to hold such assignments. These employees, whose names shall be provided by the Organization, subject to verification by the Carrier, will be allowed to continue to reside at Pratt on an attrition basis, subject to the following:

1. Any or all of such employees may elect to relocate to Dalhart immediately upon implementation and receive the relocation benefits set forth in Article VII.

2. Trainmen performing service in the Dalhart-Pratt pool who continue to reside at Pratt under this attrition arrangement will continue to be entitled to their percentage of the turns in the pool that existed prior to this merger except as provided in (3) below, although the home terminal of the pool will be Dalhart. They will be afforded reverse lodging at Dalhart and layoff privileges at Pratt. No new pool turns will be added at Pratt under any circumstances.

3. When a Pratt employee covered by this attrition arrangement vacates his/her pool assignment through retirement, resignation, normal course of seniority, voluntary relocation, etc., or 4. below, such position will no longer be maintained at Pratt, but will be readvertised at Dalhart.

4. An extra board and other regular (non-pool) assignments at Pratt (including those headquartered at Liberal) will be maintained at Pratt and will fall under the jurisdiction of this hub. If there are unfilled positions on any of these assignments, the junior trainman in the Dalhart-Pratt pool specifically named as covered by this side letter will be required to take such position or assignment, and the resulting vacant pool turn will be readvertised at Dalhart.

Note: This does not permit the Carrier to artificially inflate the extra board or other assignments for the purpose of attriting pool turns to Dalhart, and when extra board or other assignments are reduced, the employees specifically named as covered by this side letter may reclaim Pratt pool turns under this arrangement.

5. Employees covered by this arrangement will not be entitled to HAHT pay at either end of the pool runs. The pool will be operated to provide for minimal time at the away from home terminal when possible.

Yours truly,

W S Hinckley

W. S. Hinckley
General Director Labor Relations

AGREED;

General Chairperson UTU – SSW

General Chairperson UTU – SPWL

June 23, 1999
Side LetterNo.5

Gentlemen:

This refers to our several discussions concerning Yuma and the Carriers plans for assignments at that location and the extra board plans for that area.

Currently Yuma is the away from home terminal for West Colton crews. In addition there are a couple of assignments (local/road switcher) that work east and a couple of assignments (local/ road switcher) that work west from Yuma. Sometimes the Carrier has run the Imperial Valley assignments from Yuma and sometimes from West Colton.

In addition to the provisions of this Agreement, the following will apply:

1. There will be one extra board at Yuma and the extra board at Yuma will be used to fill short term vacancies on all assignments that have Yuma or El Centro as a home terminal.

2. The extra board will perform hours of service relief/turnaround service as far west as Niland (MP 667) in the LA Hub and as far east as is negotiated this Hub.

3. LA Hub prior rights are to be attrited.

Yours truly,
W.S. Hinckley

Agreed:

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

June 23, 1999
Side Letter No. 6

Gentlemen:

This has reference to the Merger Implementing Agreement for the Southwest Territory entered into this date.

During our negotiations there was considerable discussion surrounding the operational changes resulting from a merger of UP and SP operations. Specifically, it was your observation that the merged operation might possibly require an increased amount of transporting of employees, and your Organization has concerns regarding the quality of the vehicles presently used for transporting employees, as well as the drivers of said vehicles.

It was Carrier's position that there are existing procedures available to resolve any complaints regarding deficiencies in crew transportation and, as such, this was not a proper topic for inclusion in a Merger Implementing Agreement.

Without prejudice to the positions of the respective parties as set forth above, the Carrier believes it is in the best interests of all parties that routine, unannounced safety audits of crew transportation contractors be conducted, and that a process be established for prompt investigation and, if necessary, resolution of complaints of specific instances of deficiencies in this area. In this regard, this will confirm my advice given you during our negotiations that Carrier agreed it would direct its designated manager to contact a Local Chairman to be designated by your Organization for the purpose of scheduling and conducting field safety audits of transportation contractors in the hub. These safety audits will include, but not be limited to, inspection of vehicles, unannounced rides, interviewing crews, and meeting drivers. These safety audits will be performed no less frequently than quarterly.

If issues are raised by the safety audits which cannot be resolved to the satisfaction of your Organization, they may be referred to the appropriate Labor Relations Officer by the General Chairman for discussion in conference at the earliest possible date to seek a resolution. The conference will include the appropriate Regional Vice President or his designate.

Yours truly

W. S. Hinckley
General Director-Labor Relations

Agreed:

General Chairperson UTU

UNION PACIFIC EXHIBIT 34
PAGE 29 OF 52

2 A

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

June 23, 1999
Side Letter No. 7

Gentlemen:

This has reference to our negotiations covering the Merger Implementing Agreement entered into this date between the Union Pacific Railroad Company, Southern Pacific Lines and the United Transportation Union. During these negotiations, the Organization expressed concern that employees who expire on the Hours of Service Law would not be transported in a timely manner to the destination terminal.

This will confirm the advice given to you, i.e., that when an employee ties up on the Hours of Service before reaching the objective terminal, the Carrier will make every reasonable effort to relieve subject employee and transport him to the tie up point, expeditiously. The Carrier recognized the interests of the railroad and its employees are best served when a train reaches the final terminal within the hours of service. In the event this does not occur, the Carrier is committed to relieving that employee and providing transportation as soon as practical. It is understood that this commitment contemplates transportation in the form of passenger vehicle, and employees shall not be transported to the tie-up point after Hours of Service tie-ups by means of train except in case of emergency or extraordinary circumstances which make providing a vehicle impossible.

In the event the Organization feels that this commitment is not being observed at a particular location, the General Chairman shall promptly contact the Director of Labor Relations in writing stating the reasons or circumstances thereof. Within ten (10) days after being contacted the Director of Labor Relations will schedule a conference between the parties to discuss the matter and seek a resolution. The conference will include the appropriate Regional Vice President or his designate.

Yours truly,

W. S. Hinckley
General Director-Labor Relations

Agreed:

General Chairperson UTU

General Chairperson UTU

014

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

215

June 23, 1999
Side Letter No. 8

Gentlemen:

In discussing various issues involved with the merger of the Southwest Territory the parties hereto realize that the merger of the former properties into a unified system is a complex undertaking and with the changes in operations and seniority territories, employees covered by this Agreement will be required to perform service on unfamiliar territory.

Familiarization will be a large undertaking, and it is to the benefit of both parties that this process begin as soon as possible so that implementation can occur in a more orderly and rapid manner. Therefore, it is understood that Carrier may begin qualifying employees on unfamiliar territory, to the extent feasible based upon operational and manpower constraints, between time of execution of this implementing Agreement and date of implementation thereof.

It is understood that familiarization will be accomplished in accordance with Article VIII Familiarization of this Agreement. Employees making familiarization trips which involve greater mileage than their existing (pre-merger) runs will be paid actual mileage to the new objective terminal. Local UTU officers will work with local Carrier officers to implement this Side Letter in the most effective manner.

If the foregoing adequately and accurately sets forth our agreement in this regard, please so indicate by signing in the space provided for that purpose below.

Yours truly,

W. S. Hinckley
General Director-Labor Relations

Agreed:

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

217

June 23, 1999
Side Letter No. 9

Gentlemen:

This has reference to the Merger Implementing Agreement for the Southwest Territories entered into this date.

During our discussions regarding vacations, the Carrier's attention was directed to the fact that certain former Rock Island trainmen on the SSW are entitled to use their former Rock Island seniority date for purposes of determining length of vacation. This letter will confirm Carrier's commitment to preserve and honor said arrangement.

Yours truly,

W. S. Hinckley

Agreed:

General Chairperson, UTU

General Chairperson, UTU

General Chairperson, UTU

General Chairperson, UTU

General Chairperson, UTU

General Chairperson, UTU

June 23, 1999
Side Letter No. 10

Gentlemen:

During negotiations of the Southwest territory Hubs the issues of TPA's and productivity funds were discussed. In was agreed that a more detailed explanation was needed and the parties have developed the following to give further detail to the employees:

A. SSW and SPEL trainmen and yardmen shall have their TPA's adjusted as follows:

1. Those employees with a trainman's seniority date prior to November 29, 1988 shall have their TPA adjusted and a productivity account created. The adjustment shall be made by taking the UPTP per share credit value for 1999, the number of trips worked by each covered employee in the 12 months prior to October 1, 1999 and multiplying the two. This total amount shall then be divided by twelve and the monthly TPA shall be reduced by this amount.

   Example: The per trip credit value for the UPTP for 1999 is $35 per trip.(this amount is just an example and is not the actual amount) Employee A worked two hundred trips in 12 month time period. Multiple $35 x 200 for a total of $7000. Divide $7000 by 12 for a total of $583.33. The monthly TPA shall be reduced by $583.33.

2. Those employees with an interim TPA shall then have the adjusted TPA increased in accordance with the General Wage increase of July 1, 1997.

3. Those employees certified under this agreement shall have their TPA increased in accordance with the July 1, 1999 General Wage increase.

4. Those employees who worked a minimum of 150 yard shifts in 1996 as a regularly assigned yard employee will have their TPA increased by 14.82%. This is a one time adjustment and will only apply to those SPEL and SSW employees who meet the requirements set forth in this paragraph 4.

B. UPTP employees shall have their TPA's adjusted as follows:

1. Those employees with a TPA based on the calendar year 1996 shall have the TPA increased in accordance with the General Wage increase of July 1, 1997.

2. Those employees certified under this agreement shall have their TPA increased in accordance with the July 1, 1999 General Wage increase.

UNION PACIFIC EXHIBIT 34
PAGE 36 OF 52

219

C. SPEL and SSW trainmen with a trainman's seniority date prior to November 29, 1988 shall have a productivity fund account created in A. above. Once created the accounts will be handled in accordance with the provisions of sections 3 through 7 of Side Letter No. 3.

Yours truly,

W. S. Hinckley

Agreed:

General Chairperson UTU - SSW

General Chairperson UTU - SPEL-T

General Chairperson UTU - SPEL-Y

220

UTU QUESTIONS AND ANSWERS SOUTHWEST TERRITORY

Article I –SOUTHWEST TERRITORY

Q1. How far west of Yuma may an Arizona Hub employee work?
A1. As far as Niland for hours of service work and the area of assignments that go on duty at Yuma and El Centro when they hold those assignments or fill them on a short term vacancy basis.

Q2. When the language says "not including" a point may employees work into that point and if so what work may they do?
A2. Yes, employees may work into those points. For example, LA Hub pool employees may work into Yuma and perform any work permitted by applicable agreements for that class of service with Yuma as their final terminal.

Article II - SENIORITY AND WORK CONSOLIDATION

Q3. Are full time union officers including full time state legislative board representatives, Company officers, medical leaves and those on leave working for government agencies covered under Article II.H.?
A3. Yes

Q4. How many employees are covered by the inactive roster referenced in Article II.H.?
A4. The "inactive roster" noted in Article II.H. refers to the status of employees who are not in active service who pre-merger were on a UP/SSW/SPEL or SPWL roster with rights to work in the Southwest Territory. Such employees include those on leave of absence for government, union and company service, medical leave including disability, etc. Because those employees have rights to exercise seniority upon return to active service but may not do so from inactive status, such employees will be required to select a Hub upon their return to active service, contingent upon the employee having rights to the selected hub pre-merger. It is not possible to predict the number of people who may return from inactive status and, thereafter, the Hub that such people may select upon their return. Therefore, eligibility to mark up in a Hub must be determined for each individual upon that individuals return to active status.

Q5. Are their exceptions to Article II.G. with respect to seniority being eliminated?
A5. Yes, there is a side letter (No. 3) to the Portland Hub Zone 1 agreement that covers the system hostlers in Eugene. Since the UP agreement they are coming under has no provisions for system hostlers they have a one time election to place in an area covered by the SP West Agreement.

ARTICLE III - POOL/ASSIGNED SERVICE OPERATIONS

Q6. Will existing pool freight terms and conditions apply on all pool freight runs?
A6. No. The terms and conditions set forth in the surviving collective bargaining agreements and this document will govern. Pools will be regulated between 3800-4200 miles per month.

Q7. How will the crews know the miles of the new assignments?
A7. The parties will meet and review the mileage and a chart will be given to timekeeping, Local Chairmen and posted at various locations.

ARTICLE IV - EXTRA BOARDS

Q8. How many extra boards will be established at implementation?
A8. The number is not known at this time. There will be a phase in of the familiarization process and they will be consolidated and established as this process proceeds.

Q9. Are these guaranteed extra boards?
A9. Yes. The pay provisions and guarantee offsets and reductions will be in accordance with the surviving CBA guaranteed extra board agreement.

Q10. When will the Yuma extra board cover all the assignments provided for in this agreement.
A10. When this Agreement is implemented and notice is served to combine the extra boards?

ARTICLE V - TERMINAL CONSOLIDATIONS

Q11. Are the national road/yard Zones covering yard employees measured from the new terminal limits where the yard assignment goes on duty?
A11. The new terminal/station limits where the yard employee goes on duty will govern.

ARTICLE VI - AGREEMENT COVERAGE

Q12. When the surviving CBA becomes effective what happens to existing claims filed under the other collective bargaining agreements that formerly existed in the Southwest Territory?
A12. 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.

Q13. How will vacations for 2000 be handled?
A13. Vacations for 2000 will be scheduled under the provisions of the surviving CBA. The number of weeks allotted will be based on the number earned in 1999 under the CBA the employees were working prior to implementation.

Q14. If an employee 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 employee?

A14. Except in cases of emergency, the employee will be deadheaded on to the far terminal.

Q15. Is it the intent of this agreement to use employees beyond the 25 mile zone?

A15. No. These provisions only apply to outbound employees at their initial terminal within 25 miles of the initial terminal.

Q16. In Article VI B2, is the ½ basic day for operating in the 25 mile zone frozen and/or is it a duplicate payment/ special allowance?

A16. No, it is subject to future wage and COLA adjustments and it is not a duplicate payment/special allowance and thus applies equally to pre and post 1985 employees and employees hired/promoted subsequent to the provisions of this agreement.

Q17. How is an employee paid if they operate in the 25 mile zone?

A17. If an employee is transported to his/her train 10 miles East of Vaughn and takes the train to El Paso and the time spent is one hour East of Vaughn and 11 hours between Vaughn and El Paso with no initial or final delay earned,(total time on duty 12 hours) the employee shall be paid as follows:

A. One-half basic day for the service East of Vaughn because it is less than four hours spent in that service.
B. The road miles between Vaughn and El Paso.
C. Overtime, if any, based on the governing CBA provisions, calculated on the miles between Vaughn and El Paso and the 11 hours travel time between those two points.

Q18. Are miles in the 25 mile zone added to the district miles of the run?

A18. No, and time spent in the zone does not factor into the computation of overtime; however, if the time spent within the zone, if factored into the computation of overtime, would produce road overtime earnings for the tour of duty in excess of the minimum four (4) hour payment, the higher overtime earnings would apply in lieu of the minimum four hour payment.

EXAMPLE: An employee on a 130 mile run works 6 hours in the 25 mile zone and 7 hours completing their trip to the far terminal. The employee shall compute his/her time in two ways:

1. 6 hours at straight time in the 25 mile zone and 130 miles for the 7 hours (straight time) on the 130 mile trip; or

2. 13 hours on duty for a 130 mile trip, eight hours at straight time and 5 hours overtime;

And shall be paid the greater amount.

Q19. How will initial terminal delay be determined when performing service in the 25 mile zone?

A19. Initial terminal delay for employees entitled to such payments will be governed by the applicable collective bargaining agreement and will not recommence when the employee operates back through the on duty point. Operation back through the on duty point shall be considered as operating through an intermediate point.

Q20. Is it the intent of this agreement to use employees in the 25-mile zone if not qualified to operate on that territory?

A20. No, it is not the intent of this Agreement to require employees to operate against their will within the 25 mile zone if not qualified on such territory.

Q21. If the away from home terminal is outside the hub where the home terminal is located, will the 25 mile zone rule apply?

A21. If the away from home terminal is in a Hub that also has a 25 mile zone rule then this rule will apply for employees covered by this Agreement while at the away from home terminal. If the away from home terminal is in a Hub that does not have a similar rule, then the rule will not apply while at that away from home terminal.

Q22. Where is the 25 mile zone measured from?

A22. The same terminal limits as used by yard crews in their road/yard zone. If none then station limits will apply.

Q23. Does the language of VI B 3 prohibit the use of pool freight employees in straight away combination deadhead/service from picking up a train whose employee had earlier expired under the Hours of Service Act?

A23. No, the language of Article VI B 4 clearly preserves that service. The language of VI B 3 provides that extra boards will be used before pool employees in turnaround hours of service relief and does not require that they be used prior to pool employees in straight away service.

Q24. May employees run through their destination terminal up to 25 miles?

A24. No, the twenty-five mile provisions are only for obtaining a train on the far side of a terminal and not for running through their destination terminal.

Q25. How will an employee be paid who is used in the twenty-five mile zone to obtain a train, brings the train into the original on-duty terminal (now an intermediate point) and then deadheaded on to the far terminal because of insufficient time to continue with the train?

A25. The employee will be paid under the twenty-five mile provisions for the work in that Zone and deadheaded in combination deadhead/service. For example on a run of 190 miles, if an employee worked 8 hours in the 25 mile zone and then deadheaded on to the far terminal they would be paid 8 hours plus 190 miles. Employees will be deadheaded to the far terminal in these situations.

ARTICLE VII - PROTECTION

Q26. What rights does an employee have if he/she is already covered under labor protection provisions resulting from another transaction?

A26. Section 3 of New York Dock permits employees to elect which labor protection they wish to be protected under. By agreement between the parties, if an employee has three years remaining due to the previous implementation of Interdivisional Service the employees may elect to remain under that protection for three years and then switch to the number of years remaining under New York Dock. It is important to remember that an employee may not receive duplicate benefits, extend their protection period or count protection payments under another protection provision toward their test period average for this transaction. This also applies to those receiving ID protection as a result of the implementation of the service to Vaughn.

Q27. How will reductions from protection be calculated?

A27. In an effort to minimize uncertainty concerning the amount of reductions and simplify this process, the parties have agreed to handle reductions from New York Dock protection as follows:

1. **Pool freight assignments** - 1/15 of the monthly test period average will be reduced for each unpaid absence of up to 48 hours or part thereof. Absences beyond 48 hours will result in another 1/15 reduction for each additional 48 hour period or part thereof.

2. **Five day assignments** - 1/22 of the monthly test period average will be reduced for each unpaid absence of up to 24 hours or part thereof. Absences beyond 24 hours will result in another 1/22 reduction for each additional 24 hour period or part thereof.

3. **Six & seven day assignments** - The same process as above except 1/26 for a six day assignment and 1/30 for a seven day assignment.

   NOTE: There shall be no offset from protection for rest days on five day and six day assignments,.

4. **Extra board assignments** - 1/30 of the monthly test period average will be reduced for each unpaid absence of up to 24 hours or part thereof. Absences beyond 24 hours will result in another 1/30 reduction for each additional 24 hour period or part thereof.

NOTE: Absences on the extra board shall be calculated from the time of unavailability (layoff, missed call, etc) until the next time called for service. For example: If a employee lays off on Monday at noon, marks up the next day, Tuesday, and does not work until 2 AM on Wednesday, then they shall be off for protection purposes for thirty-eight (38) hours and shall be deducted 2/30 of their protection.

Q28. Why are there different dollar amounts for non-home owners and homeowners?
A28. New York Dock has two provisions covering relocating. One is Article I, Section 9, Moving Expenses and the other is Section 12, Losses from Home Removal. The $10,000 is in lieu of New York Dock moving expenses and the remaining $20,000 is in lieu of loss on sale of home.

Q29. Why is there one price on loss on sale of home?
A29. It is an in lieu of amount. Employees have an option of electing the in lieu of amount or claiming New York Dock benefits. Some people may not experience a loss on sale of home or want to go through the procedures to claim the loss under New York Dock.

Q30. What is loss on sale of home for less than fair value?
A30. 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.

Q31. If the parties cannot agree on the loss of fair value what happens?
A31. 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.

Q32. What happens if a employee sells the home for $20,000 to a family member?
A32. That is not a bona fide sale and the employee would not be entitled to either an in lieu of payment or a New York Dock payment for the difference below the fair value.

Q33. What is the most difficult part of New York Dock in the sale transaction?
A33. 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.

Q34. Who is required to relocate and thus eligible for the allowance?
A34. A 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 into one of the three hubs and released and employees who have to exercise seniority due to a non merger event.

Q35. Are there any seniority moves that will be treated as required to relocate?
A35. Yes and the following is an example:

Example 1: The Yuma portion of the Tucson-Yuma pool is moved to Tucson. Senior employees from Yuma who bid in the turns in Tucson are eligible for the allowance.

Q36. Will the new extra board at Alpine also be covered?
A36. Since this is a result of the merger agreement the initial position(s) is eligible for a relocation.

Q37. At what time did an employee need to be a home owner to qualify as a home owner for relocation purposes?
A37. New York Dock protects home owners due to loss on sale of home that are caused by the merger. While other Hubs had an earlier date, due to the time lapse between the first and this Hub the Carrier has agreed to cover as home owners those who owned those who owned a home on or before October 1, 1998.

Q38. Will employees be allowed temporary lodging when relocating?
A38. Employees entitled to a relocation allowance shall be given temporary lodging for thirty (30) consecutive days as long as they are marked up.

Q39. Are there any restrictions on routing of traffic or combining assignments?
A39. There are no restrictions on the routing of traffic in the Southwest Territory 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 between the Carriers is covered in this Agreement and is permitted.

Q40. Will the Carrier offer separation allowances?
A40. The Carrier will review its manpower needs at each location and may offer separation allowances if the Carrier determines that they will assist in the merger implementations.

Q41. How will Union Officers' TPAs be established?
A41. The Carrier will average the two above and two below (on the pre-merger rosters) in any service. If greater than their regular TPA it shall be used. Employees with unusually high or low TPAs will not be considered.

Q42. How will an employee be advised of their test period earnings?
A42. Test period averages will be furnished to each individual and the General Chairmen.

Q43. Is vacation pay received during the test period considered as compensation?

A43. Yes, and used to determine if the TPA has been reached for the month when paid.

Q44. Regarding the above question, if an employee is on vacation the entire month and the vacation pay thereof is less than his TPA, would he be entitled to draw a displacement for the difference?
A44. Yes.

Q45. How is length of service calculated?
A45. It is the length of continuous service an employee has in the service of the Carrier with a month of credit for each month of compensated service.

Q46. If an employee has three years of trainman's service, and one year of clerical service how many years of NYD protection will they have?
A46. Four.

Q47. How will the employees know which jobs are higher rated?
A47. The Carrier will periodically post job groupings identifying the highest to lowest paid jobs.

Q48. Will specific jobs be identified in each grouping?
A48. Pools, locals and extra boards may be identified separately but yard jobs and road switchers will not be.

Q49. If an employee has worked full time in yard service the previous 12 months,, will he/she have to place in road service if it is the highest paying assignment to keep from having offsets?
A49. Recognizing that some employees have spent considerable time in the yard and have not been on the road in some time, the Carrier will allow these employees to remain in yard service. It will be the responsibility of the Local Chairmen to identify these individuals.

Q50. If an employee has started their NYD protection in another Hub and they elect to place in one of the three Southwest Territory Hubs, will they start their NYD protective period over?
A50. No, they will continue on with the same time period that started with the implementation of the other Hub.

Q51. If an employee is displaced does an offset to his/her TPA begin immediately upon being notified?
A51. By agreement between the parties, the Carrier will allow an employee up to three hours after being notified to make a displacement without an offset being applied.

Article IX -FAMILIARIZATION

Q52. Are there a set number of trips that an employee will take in learning new territory?
A52. No, since employees have differing experiences the number of trips will vary and the local chairmen will work with local operating officers on the number and type of trips needed.

Q53. An employee who makes familiarization trips only on the portion of the geographic territory where he intends to work may later exercise seniority or be forced to another part of the territory with which he is not familiar. Does this Agreement apply to the necessary additional familiarization trips?
A53. Yes, no matter how much time has elapsed from date of implementation of this Agreement.

Q54. Who will approve an employee as being properly familiarized on a new territory?
A54. Carrier officer.

Q55. If an unqualified extra employee stands first out for an assignment and the next extra employee is qualified, may the first out extra employee be run-around?
A55. No; however, the Carrier will attempt to place employees unfamiliar with extra board assignments on a familiarization board (paid the same as if on the extra board) to learn the area prior to marking up on the extra board. If the above happens, then the Carrier may call the next out employee to be a pilot, use a qualified officer to ride with them or use one of the peer training employees.

Q56. If the next out employee is used as a pilot, how shall they be compensated?
A56. The same as if they had operated the train.

Article X - IMPLEMENTATION

Q57. On implementation will all employees be contacted concerning job placement?
A57. 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. When the Carrier posts the notice on pool changes and increases and decreases in extra boards Local Chairman will assist in handling the bidding, application and placement process at that time and employees may be contacted for placement if insufficient bids/applications are received. The new seniority rosters will be available for use by employees who have a displacement.

Q58. During the execution of this Agreement, it is possible that the parties may discover errors or omissions relating to mile post designations, crew district mileages, etc. Is it the intent of either party to hold the other party to such items because there was simply not time to verify them for accuracy?
A58. No, these type of clerical errors may be corrected when discovered.

Side Letters

Q59. Do the provisions of side letter #4 apply to trainmen in the Salina Hub who have held their seniority in abeyance and were working Pratt, Kansas trainmen positions on March 24, 1999?

A59. Yes, if they return to Pratt in the initial Hub seniority slotting.

Q60. Do the provisions of side letter #4 apply to trainmen who were in trainman training at Pratt on March 24, 1999?

A60. Yes, if they reside at or in the vicinity of Pratt and if in the Hub at the initial Hub seniority slotting.

SOUTHWEST HUB MILEAGE CHART

Pool	Mileage
Pratt – Dalhart	242
Dalhart – Vaughn	195
El Paso – Vaughn	229
El Paso – Toyah	191
El Paso – Alpine	220
El Paso – Lordsburg	149
Tucson – El Paso	310
Tucson – Lordsburg	161
Tucson – Nogales (tumaround)	132
Tucson – Phoenix	121 (130 basic day)
Tucson – Phoenix (tumaround)	242
Tucson – Yuma	254
Phoenix - Yuma	278

These are base miles. In El Paso, if a location different from the one used for base miles, is used for receiving or leaving a train and trainmen are currently paid additional miles they are retained.

2-1

SUPPLEMENTAL MERGER IMPLEMENTING UNDERSTANDING
Southwest Territory
(Arizona, El Paso and Dalhart Hubs)

between the

UNION PACIFIC
SOUTHERN PACIFIC TRANSPORTATION COMPANY
And
UNITED TRANSPORTATION UNION

During the final negotiating session and read through of the initialed Southwest Territory Implementing proposal, several questions arose concerning the intent of certain provisions. Since some of the issue would take detail to explain the parties agreed to enter into this supplemental understanding to clarify the merger proposal.

A. **Engineers in training** – It is anticipated that at the time of implementation their will be engineers in training in the Dalhart and El Paso Hubs that will have started training under an agreement different than the SPWL UTU-E agreement. The merger proposal provides that these engineers in training shall continue under the terms and conditions of the agreement they started until they have completed training. However, should the General Chairmen representing engineers in training in these Hubs reach an agreement with the SPWL UTU-E General Chairperson on transitioning these employees to the SPWL UTU-E Agreement then that agreement, if approved by the Carrier, shall be applied.

B. **Deadheading between Alpine and Toyah** – The Agreement provides that employees will not be deadheaded between Alpine and Toyah for return trips. The question then arose about trains that were enroute between Alpine or Toyah and El Paso and how they would be handled. After much discussion it was agreed that the intent of the language was to not deadhead a crew between the two terminals and then tie them up at the other terminal. It was further understood that it would benefit train movement and return employees to the home terminal quicker if the following was agreed:

1. If a train is laid down between Sierra Blanca and El Paso heading west and an away from home crew is used in combination service to bring it into El Paso, a crew from either Toyah or Alpine may be used.

2. If a train is East of Sierra Blanca and heading west and an away from home crew is used in combination service to bring it into El Paso, the first crew used will be a crew from the away from home terminal on the same line. If none are rested and available then a crew from the other away from home terminal may be used.

C. **Dalhart hours of service relief** – The agreement calls for Dalhart extra board crews to provide turnaround hours of service relief as far as Springfield Colorado. It was agreed the Carrier would contact the UPED General Chairman to coordinate this with his committee prior to making any change in the current handling of hours of service relief in this territory.

D. **Dalhart / Springfield pool operations** – The agreement calls for short pool service to Springfield. Currently there is no agreement with the Pueblo employees for a Pueblo – Springfield short pool to connect up with the Dalhart-Springfield pool. The Carrier will not commence Dalhart - Springfield service until permitted (negotiation or arbitration) to operate Pueblo – Springfield. The Carrier will serve an Article IX notice on the UPED to commence negotiations.

E. **Dalhart-Tucumcari short pool productivity fund adjustment** – While side letter No. 10 sets forth the method to create the SSW productivity fund, it was noted that when the Dalhart – Tucumcari pool is abolished and the longer Dalhart – Vaughn pool is implemented that the number of starts per employee would be reduced. It was therefore agreed that the employees on the attached list would have each start during the test period counted as .5 starts (except as noted for the number 5 listed employee who borrowed out part of the time). Until placed in the long pool, each start after implementation shall also count as .5 starts for productivity fund credit.

F. **Productivity funds** – The productivity fund portions of Side Letters No. 3 and 10, while part of the New York Dock Implementing Agreement for the Southwest Hubs are not limited to the six (6) year New York Dock maximum protection, but will continue for each individual covered by these two (2) side letters until such time as they leave the craft covered by the original UPTP Crew Consist Agreement.

G. **Alpine extra board (relocation)**– Since the Alpine extra board is a new assignment established due to the merger, the initial occupant of the assignment(s) will be entitled to relocation benefits if they meet the usual criteria. Subsequent filling of vacancies on the assignment(s) are seniority moves not covered under the relocation provisions.

H. **Alpine extra board (bidding)** – The Alpine extra board is shared by employees from both the San Antonio Hub and the El Paso Hub. If an assignment at these locations goes no bid by the Hub that has rights to it, then employees from the other Hub may bid them in. If it goes no bid from both Hubs then employees from the Hub that has prior rights will be forced.

I. **Transferees** – The Agreement calls for the certifying of employees under New York Dock already in the hub. It is understood that certain employees may still come into the hub prior to implementation. It is agreed that if they would have been certified in the Hub area that they move from that they would be so certified in this Hub.

J. **Pratt phase out** – It was agreed that the parties would get together after implementation to develop further provisions for the phase out of Pratt as a home terminal using the provisions of the implementing agreement as the guidelines.

K. **Tucson - Yuma pool relocations** – The Tucson – Yuma pool shall be prior righted to those Yuma trainmen working in Yuma on March 24, 1999 and with a seniority date prior to august 6, 1996. The odd numbered slots will be filled by those from Tucson and the even numbered from those from Yuma. Each Yuma conductor relocating to Tucson at the initial single ending of the pool and assigned in the pool shall be placed on a specific turn by name. They shall have prior rights only to that turn. These prior rights shall no longer be effective at the end of the sixth year after implementation and at that time all conductor positions in the pool shall be available to conductors based on their Arizona Hub seniority. If a relocating Yuma conductor moves off their prior right spot during the six year period then he/she shall no longer be prior righted to that pool position. Once voluntarily vacated the turn will be open to the roster based on Hub seniority.

This supplemental understanding is part of the merger implementing agreement and is entered into this 23rd day of June, 1999.

For the Organization :

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

General Chairperson UTU

For the Carrier:

General Director Labor Relations

General Director Labor Relations

Assistant Vice President
Southern Region

UNION PACIFIC EXHIBIT 34
PAGE 51OF 52

234

General Chairperson UTU

General Chairperson UTU

Vice President UTU

Vice President UTU

August 15, 2003

Mr. John Grother
1718 Rustic Park Drive
Kingwood, TX 77339

Dear Mr. Grother:

I have been asked by Mr. Davidson to respond to your letter dated July 30, 2003.

As you have alleged that you have been the subject to discrimination in the past and have made these charges known to the EEO group they have responded to the EEO state office. The Texas EEO office will respond to your charges in the near future.

Your position change, which occurred in 1997, was reviewed by Mr. Jerry Davis and found to be appropriate. The fact that others were treated differently is because they had different skills and abilities that were considered in the operating position reorganization and assignments that occurred at that time.

The annual PDR process is a performance review procedure that is managed by your supervisor. I reviewed your 2001 and 2002 PDR results and procedures with Don Fryar and Chalie Bishop. I believe the appropriate steps were followed and your PDR properly reviewed with you at year end. You were provided a development plan for 2003 and will not receive any bonus for 2002 performance.

Your current promotional opportunities are dependent upon your individual skills and abilities and recent job performance as evaluated by interviews and recommendations. You should speak to hiring managers that have interviewed you about how you might improve your chances for achieving promotional opportunities. Hiring managers have the best information as to why individual candidates are selected or not.

Sincerely,

Butch Ethington
Ombudsman

CC: Dick Davidson - Chairman - via e-mail
Ike Evans - President - via e-mail
Dennis Duffy - Executive VP Operations - via e-mail
Yvonne Method-Walker - via e-mail
Jim Bell - via e-mail
Elaine Myers - via e-mail

September 8, 2003

Mr. John Grother
1718 Rustic Park Drive
Kingwood, TX 77339

Dear Mr. Grother:

I received your letter of September 1, 2003. You cover the same ground that you raised in previous letters. You ask in your letter if I am willing to reconsider - - I am not willing to reconsider. The organizational events of 1997 are long past. You have had, and continue to have, ample opportunity to prove and improve your skills and abilities in daily, weekly, monthly and yearly performance. I believe you should focus on excelling at your current job responsibilities.

Sincerely,

Butch Ethington
Ombudsman and Director of Ethics

CC: Dick Davidson - Chairman - via e-mail
Ike Evans - President - via e-mail
Dennis Duffy - Exec. VP Operations - via e-mail
Ms. Yvonne Method- Walker - via e-mail
Mr. Jim Bell
Ms. Elaine Myers

[redacted]

September 10, 2003

Mr. John Grother
1718 Rustic Park Drive
Kingwood, TX 77339

Dear Mr. Grother:

Mr. Stan McLaughlin, VP-Quality, asked me to respond to your letter to him dated August 30, 2003. In your letter you ask Mr. McLaughlin: "Can you assist in this Fair Treatment appeal?" Mr. McLaughlin has assigned the review of your letter to me. Your appeal is denied.

The organizational events of 1997 are long past. You have had, and continue to have, ample opportunity to prove, and improve, your skills and abilities in daily, weekly, monthly and yearly performance. I believe you should focus on excelling at your current job responsibilities.

Sincerely,

Butch Ethington
Ombudsman and Director of Ethics

CC: Stan Mclaughlin - VP - Quality - via e-mail

PRS027 MSG 502 - MORE INFORMATION AVAILABLE -HIT ENTER-
YTD TIME SUMMARY - 23

SOC SEC NO ===> [redacted] EMPLOYEE NAME ===> GROTHER J E
COMPANY CODE => 9X YEAR ==> 97 CLASS OF TIME ==>

YTD TIME SUMMARY ATTRIBUTES

CLS OF TIME	ALPHA DESCRIPTION	UNION CODE	UNT IN	MILES/ OTHERS	YTD HOURS	EXTENDED PAY
001	STRAIGHT TIME	00	1		1960.00	41,968.04
314	TRANSP HOUSEHOLD GOODS NON TAX	00	3	1		14,859.14
315	TRAVEL OLD TO NEW NON TAX	00	3	1		267.36
318	QUALIFIED RESIDENCE	00	3	1		2,456.00
322	ONE MONTH SALARY	00	3	1		4,928.00
325	GROSS UP	00	3	1		3,473.50
334	MEALS OLD TO NEW LOCATION	00	3	2		701.33
335	MEALS PRE MOVE	00	3	1		2,135.83
336	MEALS TEMP LIVING	00	3	1		3,397.70
380	OLD-NEW AUTO MILEAGE NON TAX	00	3	1		98.58
381	OLD-NEW AUTO MILEAGE	00	3	1		240.99

) ENTER NEXT TOPIC OR 98 - MAIN MENU, 99 - PRIMARY MENU

te: 9/8/04 Time: 10:23:52 AM

PRS027 MSG 504 - INQUIRY COMPLETED
YTD TIME SUMMARY - 23

SOC SEC NO ===> [redacted] EMPLOYEE NAME ===> GROTHER J E
COMPANY CODE => 9X YEAR ==> 97 CLASS OF TIME ===>

YTD TIME SUMMARY ATTRIBUTES

CLS OF TIME	ALPHA DESCRIPTION	UNION CODE	UNT IN	MILES/ OTHERS	YTD HOURS	EXTENDED PAY
382	DISCOUNT POINTS	00	3	1		3,588.00

( ) ENTER NEXT TOPIC OR 98 - MAIN MENU, 99 - PRIMARY MENU

240

PRS027 MSG 504 - INQUIRY COMPLETED
YTD TIME SUMMARY - 23

SOC SEC NO ===> [redacted] EMPLOYEE NAME ===> GROTHER J E
COMPANY CODE => 9X YEAR ==> 97 CLASS OF TIME ==> 001

YTD TIME SUMMARY ATTRIBUTES

CLS OF TIME	ALPHA DESCRIPTION	UNION CODE	UNT IN	MILES/ OTHERS	YTD HOURS	EXTENDED PAY
001	STRAIGHT TIME	00	1		1960.00	41,968.04

2 months (June & May) @ 6200 = 12,400
4 months (July, Aug, Oct Dec) @ 4928.01 = 19,712.04
2 month (Sept Nov) @ 4928.00 = 9,856.00
41,968.04

) ENTER NEXT TOPIC OR 98 - MAIN MENU, 99 - PRIMARY MENU

UP System

May	6,200
June	6,200
July	4928.01
Aug	4928.01
Sept	4928
Oct	4928.01
Nov	4928.00
Dec	4928.01
	41968.04

SP System

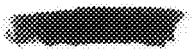
Jan	6200
Feb	6200
Mar	6200
Apr	6200
	24,800

Total 41,968.04
24,800
66,768.04

UNION PACIFIC EXHIBIT 43
PAGE 3 OF 3

Date: 9/8/04 Time: 10:54:19 AM

2/04



APPENDIX 10

UP44

Sent via fax to Messrs. MacDougall and Loomis
Sent via U. S. Priority Mail to Messrs. Grother, MacDougal and Loomis

REC'D
SEP 30 2004
Labor Relations

Lynette A. Ross
Arbitrator

1220 Fairway Drive
Lawrenceburg, KY 40342-9706

(502) 859-9003
(502) 859-9004 (fax)
E-mail: lynetteross@hotmail.com

September 28, 2004

Mr. John E. Grother
1718 Rustic Park Drive
Kingwood, TX 77339

Mr. Gordon P. MacDougall, Esq.
Representative for John E. Grother
Suite 410
1025 Connecticut Avenue, NW
Washington, DC 20036

Mr. W. E. Loomis
General Director
Employee Relations Planning
Union Pacific Railroad Company
1400 Douglas St., Stop 0710
Room 332
Omaha, NE 68179-0710

Re: New York Dock Arbitration: John Grother and the Union Pacific Railroad Company

Dear Messrs. Grother, MacDougall, and Loomis:

This is to confirm the telephone conference conducted on this date, among the Committee members in this case, with Mr. MacDougall representing Member Grother. The purpose of the conference was to discuss Mr. Grother's procedural request of September 21, 2004, communicated to the Carrier and Neutral Members through his Representative.

Specifically, the Grother Member submits that Pargaraph D of the June 18, 2004 Memorandum of Agreement, governing the upcoming arbitration hearing, requires the Carrier Member to tender a "verified statement under oath" to the Grother Member prior to the hearing, and as a pre-condition of any live testimony by its witness, Mr. Ken Packard. The Grother member requests receipt of Mr. Packard's statement on or before October 1, 2004, and essentially asks the Neutral Member to direct the Carrier Member to furnish the statement or else Mr. Packard shall be precluded from appearing at the October 12, 2004 hearing. By letter dated September 24, 2004, the Carrier Member submitted his response, disagreeing with the September 21, 2004 request.

During our telephone conference, Mr. MacDougall, as Representative of Mr. Grother, and Carrier Member Loomis amplified the positions set forth in their above-referenced letters. Mr. Loomis related that, as an individual directly familiar with Mr.

241

UNION PACIFIC EXHIBIT 44
PAGE 1 OF 6

Grother's circumstances at the time of the event which gave rise to his claim, Mr. Packard is expected to provide his views on the causality issue and convey his understanding of Mr. Grother's duties as SMTO in Tuscon. Mr. Grother will have an opportunity to respond to Mr. Packard's statements at the hearing.

After giving careful consideration to the parties' positions in light of Paragraph D, referenced above, the Neutral Member finds that Paragraph D allows the Carrier Member to present Mr. Packard as a Carrier witness without the pre-condition of submitting a "verified statement". Therefore, the Grother Member's procedural request is denied.

Mr. Grother is reminded that, as a Member of the Committee, notwithstanding the fact that to this point he has provided two witness "verified statements", under Paragraph D he retains an equal right to present witnesses without tendering any written statements, in advance, to the other Committee Members. Furthermore, as Paragraph D clearly sets forth, at the conclusion of the hearing, both parties may present post-hearing briefs within 20 days of the close of the hearing.

Very truly yours,

Lynette A. Ross

Lynette A. Ross

September 24, 2004

Ms. Lynette A. Ross
1220 Fairway Drive
Lawrenceburg, KY 40342

Dear Ms. Ross:

This refers to Mr. Gordon P. MacDougall's letter of September 21, 2004. In that letter, Mr. MacDougall asks for the following:

> *"It is my request that the committee direct the carrier member to serve the written statement of Mr. Ken C. Packard, in its entirety; to be verified under oath, on or before October 1, 2004, or else the individual be precluded from appearing at the October 12 hearing."*

Union Pacific opposes Mr. MacDougall's request for the following reason:

The Memorandum of Agreement between John E. Grother and Union Pacific Railroad Company dated June 18, 2004, provides for the following in Paragraph D:

> *"At the hearing, the parties may be heard in person, or by counsel, and they may present witnesses, statement of fact, supporting evidence, data and argument."* (emphasis added)

The Memorandum of Agreement has no requirement for a written statement. The Memorandum of Agreement does not link the requirement for a written submission with the opportunity to present witnesses - the requirement and the opportunity occur at different times (pre-hearing and at the hearing). The Memorandum of Agreement clearly provides "the parties … may present witnesses" without restriction. On this basis alone, Mr. MacDougall's request must be denied.

In addition, Union Pacific opposes Mr. MacDougall's request for the following reasons:

(1) Mr. MacDougall's preference for "verified statements" over live testimony stands centuries of Anglo-American jurisprudence on its head. Live testimony, where the fact-finder may judge a witness's credibility, is always preferable to "verified statements." This is especially true in this case where the "verified statements" are clearly self-serving or Grother-serving. Mr. Packard, Mr. Grother's immediate supervisor on the Tucson Service Unit (not, as Mr. MacDougall wrongfully says, "asserted immediate supervisor") should be allowed to testify without the requirement of a written statement.

UNION PACIFIC EXHIBIT __
PAGE 3OF 6

William E. Loomis
General Director

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 0710, Omaha, NE 68179-0710

(2) Mr. MacDougall implies that witness testimony from Mr. Packard will somehow surprise Mr. Grother. Nothing could be farther from the truth. Union Pacific advised Mr. Grother in its submission that Mr. Packard would be a witness at the hearing. In fact, Union Pacific specifically advised Mr. Grother in its submission that Mr. Packard was "a person familiar with the circumstances involving Mr. Grother at Tucson in mid-1997." Mr. MacDougall cannot claim surprise.

(3) Finally, Mr. MacDougall furnishes no support for his request other than his opinion. In the first paragraph of his letter, he says, "I deem it highly unfair..." In the third paragraph, he says, "I consider this tactic..." "I deem" and I consider" cannot serve as justification for Mr. MacDougall's request.

Based on all the foregoing, there can be no doubt Mr. MacDougall's request is without merit and must be denied. The Surface Transportation Board saw no merit in his repeated protestations and neither should this Committee. Paragraph D clearly gives Union Pacific the right to present witnesses at the hearing without any preconditions such as written statements.

Yours truly,

W. E. Loomis
General Director
Labor Relations

CC: John E. Grother
Gordon P. MacDougall

LAW OFFICES
GORDON P. MACDOUGALL
1025 CONNECTICUT AVE., N. W.
WASHINGTON, D. C. 20036

TELEPHONE
AREA CODE 202
223-7052

September 21, 2004

Ms. Lynette A. Ross
1220 Fairway Drive
Lawrenceburg KY 40342

Re: Grother/Union Pacific-NYD

Dear Ms. Ross:

This is in response to the carrier's submission, received September 14, 2004, with particular reference to the statement, at p. 41, that Mr. Ken Packard will be present as a witness at the hearing scheduled for October 12. Thus, the carrier's case--on the critical issue of causality--has not been presented by any advance written submission of facts or statements from knowledgeable personnel; rather, it has been deferred, and is now projected to be through "live" testimony from Mr. Packard, former Service Unit Superintendent (Division Superintendent). I deem it highly unfair, prejudicial, and serves to deny a fair hearing to the employee, for the carrier's case to be presented in this manner--the employee first learning of the only known opposition statement orally at the hearing, without advance opportunity to check facts or to gather further information, and in an environment (Washington DC) far removed from Tucson AZ. I expressed a premonition the carrier might advance what it has now seeks to achieve procedurally, per my letter of May 28, 2004. (Employee Ex. E-15).

I attempted to reach W.E. Loomis yesterday, having finished my initial review of the carrier's written submission over the weekend, to first raise my concerns with him. However, I am advised he is on vacation until September 28. In accordance with his wishes expressed on his answering tape, I am sending a copy of this letter to Mr. Richard D. Meredith, by overnight express.

I consider this tactic of deleting a critical element for a written submission, with substitution by a "live" hearing submission, to be contrary to the Memorandum of Agreement (MOA) governing procedures for this arbitration. (Employee Ex. E-16; UP Ex. 19). Paragraph D provides that the partisan parties shall serve written submissions. To be sure, there is a safety valve for witnesses should such become necessary, but the written submission and witness provisions must be read together and in harmony with each other; here, the "live" and unannounced testimony is to be from the employee's asserted immediate supervisor, and such oral submission on an important matter would be contrary to the agreement for written submissions in advance of the hearing

245

UNION PACIFIC EXHIBIT __

It is my request that the committee direct the carrier member to serve the written statement of Mr. Ken C. Packard, in its entirety, to be verified under oath, on or before October 1, 2004, or else the individual be precluded from appearing at the October 12 hearing. This is not onerous--the employee has submitted five verified statements in his written submission.

Very truly yours,

Atty. for John E. Grother

cc: W.E. Loomis
R.D. Meredith

UNION PACIFIC EXHIBIT __
PAGE 6OF 6

246

UP-45

LAW OFFICES
GORDON P. MACDOUGALL
1025 CONNECTICUT AVE. N. W.
WASHINGTON, D. C. 20036

TELEPHONE
AREA CODE 202
223-0736

September 29, 2004

W.E. Loomis, Gen. Dir.
Employee Relations Planning
Union Pacific Railroad Company
1400 Douglas St.-Stop 0710
Omaha NE 68179

REC'D
OCT 05 2004
Labor Relations

VIA FAX/US MAIL

Re: Union Pacific/Grother

Dear Mr. Loomis:

Your facsimile of yesterday came to my attention today. You seek copies of published opinions, referring to Grother's submission, at p. 3, n.1, "However, slip opinions will be furnished to committee members upon request."

At this time, such would be quite an undertaking, coming some two weeks after the partisan parties exchanged their submissions, and less than two weeks before hearing. Grother's intent was to supply these published opinions, which are available on the bookshelves of many public libraries, in the event members of the committee so desire. Please note the use of the plural "members."

Grother's offer was premised upon the geographical location of the neutral member. Grother will undertake the task of providing two sets if one is requested by the neutral member. The other would be forwarded to yourself as desired.

However, the Union Pacific law department, at Omaha, is believed to have more than a complete set of the very opinions cited in the Employee's submission. I spoke today with one of the several attorneys I deal with in that department. I am advised their library resources are available to you; indeed, I rather suspect the law department would prefer you secure your legal materials from UP in Omaha, rather than from Grother's attorney. Accordingly, Grother is unwilling to go to the expense of reproducing these materials merely at the request of one (UP) committee member.

I am sorry, but I must decline your request at this time.

Very truly yours,

Gordon P. MacDougall

Attorney for John E. Grother

UNION PACIFIC EXHIBIT 45
PAGE 1 OF 3

cc: L.A. Ross
J.E. Grother

247

November 12, 2004

Mr. John Grother
1718 Rustic Park Drive
Kingwood, TX 77339

Dear Mr. Grother:

I received your letter dated November 8, 2004 regarding your claims against Union Pacific.

Since you have current actions pending against the railroad (for EEO and New York Dock issues), I believe that those are the proper forums through which to resolve your claim(s).

I am sure the arbitrator or hearing officers, by considering all of the evidence, will render a fair and impartial judgement.

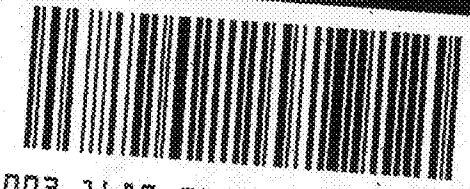
Sincerely,

Butch Ethington
Ombudsman & Director of Ethics
Union Pacific



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

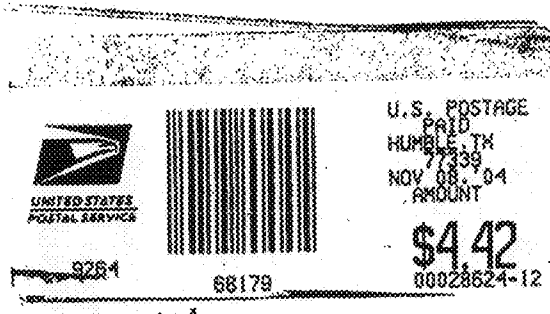
CERTIFIED MAIL



7003 1680 0001 4904 9024

P. J. SULLIVAN

NOV 12 2004



Union Pacific Company
ms. Barb Ethington
Ombudsman - Director of Ethics
1416 Dodge Street
Omaha, Ne
68179

UNION PACIFIC EXHIBIT 52
PAGE 2 OF 34

Via Certified Mail-7003 1680 0001 4904 9024

Mr. Butch Ethington
Ombudsman-Director of Ethics
1416 Dodge Street
Omaha, Ne 68179

November 8, 2004

Dear Mr. Ethington,

Subject: New Evidence that I was treated unethically in 1997

Reference my previous correspondence to you regarding 1997 Unethical Practices, attached Exh.'s 1 and 3 are sworn Arbitration testimony by my alleged 1997 supervisor Kenneth C. Packard which clearly state that:

1. "...**the service issues and everything, they were insurmountable, no matter who was in charge"** (Pres. Davis's letter referred to service failure). (If no one could do yard consolidation, why severe reduction in wages?)

2. Regarding the 1997 required justification to warrant a wage reduction (Exh. 2), Packard Exh. 3 concerning writing anything on Form 15121: "No, I'm not familiar with the form at all"

(Therefore, my alleged supervisor did not provide any 1997 justification as required and my wages should not have been reduced without justification!)

In view of: 1) New UP **sworn evidence,** 2) Exh. 2 Policy of UP that usually a persons wages were not reduced in 1997, 3) that when wages were reduced special justification by the supervisor was required and Packard states no knowledge of writing such justification, and 4) that my similarly situated Houston MIO peers (Harry Stark and Joe Crow) displaced from Operations to the same job in the same City were not reduced in wages per UP payroll records; are you now willing to reconsider my request for **Fair Treatment,** which is publicly published Policy of UP to be a ***fundamental right* of ALL Union Pacific Employees** and allow the prior requested reimbursement of rightfully earned wage level after 28 years of dedicated service in 1997? Please advise.

Sincerely,

John Grother

Attachments-Exh's 1-3

Exh. 1

Now, the issues that went on at Tucson, the service issues and everything, they were insurmountable no matter who was in charge. It was a tough time for the Union Pacific railroad.

MS. ROSS: Thank you.

MR. [redacted] First of all I'm going to take that damn thing off because it catches on my arm every time I move. I'm going to make an assumption, Lynette, just making sure you understand my presentation. I'm going to make an assumption that you have read the submissions and studied the exhibits and I'm not going to go through them ad

EXH. 2

DEMOTION POLICY 1997

Rev. 3/1/96

Demotion justification	If an employee is transferred to a lower job grade due to his/her inability to perform the duties of the prior position, the SRG and job grade of the new (lower) position will apply on the effective date of the transfer.
What about salary changes?	In most cases, the employee's present salary level is retained. However, if you believe a salary adjustment is warranted, provide Operating HR with your justification and we will try to obtain Railroad HR sign-off on the 15121.
What if it isn't a demotion?	If an employee is transferred to a lower grade for reasons other than performance, use "other" on the 15121 with reasons noted in the "comments" section of the form.

[redacted]

Q That's this comment here?

A Right.

MR. MacDOUGALL: Did you write on this one? Did you write anything on this one, the 151-21?

MR. PACKARD: No, I'm not familiar with the form at all.

[redacted]

Q I believe you testified earlier you came back from Denver to Tucson with Tom Murphy and at that time this process was in motion?

A The arrangements for his transfer were in motion.

MR. MacDOUGALL: When was this, a day or two before the end of June? Murphy and you spoke to him? If you recall.

MR. PACKARD: June-July.

MR. MacDOUGALL: That's pretty close.

MR. PACKARD: I'm not exactly sure

November 10, 2003

Mr. John Grother
1718 Rustic Park Drive
Kingwood, TX 77339

Dear Mr. Grother:

I received your letter via regular mail dated November 2, 2003 regarding your accepting a lesser salary and position in 1997. You were given a choice at that time according to Mr. Ken Packard, Superintendent. There was no unethical practice. The choices and decisions made during that merger period were difficult for many people. The fact that you were one of the managers who were given difficult choices is unfortunate, but not unethical.

I will not rehash the personnel evaluations and decisions made by management and you so long ago. Mr. Jerry Davis responded to your petition in September of 1997.

Sincerely,

Butch Ethington
Ombudsman and Director of Ethics

VIA CERTIFIED LETTER

December 15, 2002

Union Pacific Railroad-Ombudsman
Attn: Mr. Butch Ethington (Confidential)
1416 Dodge Street
Omaha, NE 68179

Rcvd 12/20/02 cee

Mr. Ethington,

This refers to our discrimination discussion today and Union Pacific Railroad ("UPRR") President and Chief Operating Officer Ike Evans letter dated August 5, 2002 (Exh.1), and the Building America Brochure enclosed therewith (i.e. "Building America is about how we act with each other"). Specifically, I am convinced that I have "**not been treated** appropriately within the **values** and **attributes** inherent in Union Pacific's reputation". My fellow managers have not afforded me respect, **FAIRNESS (A FUNDAMENTAL UPRR EMPLOYEE RIGHT)**, or ethical behavior. Below, I shall indicate a few of the facts which I have recently (starting 7/31/02) been allowed to know so far, about my two salary rate grade ("SRG") demotion on July 1, 1997 from Senior MTO at Tucson, Arizona to MIO at Houston, Texas-a whopping $1,272 per month.

The purpose of this letter is to request **COMPENSATION & FAIRNESS:**

1) Compensation reimbursement - see Attachment 2 for details,
2) Deletion of unknown-to-me demotion "disciplinary reasons" from my on-line, people-soft, hard copy personal record, and any other records,
3) Immediate appropriate raise to salary Band C (Attch 2 details the math)- $ 7,528/month effective 1/1/03 & $ 7,791 effective 7/1/03, OR present wages of Mr.Thomas Parr (my replacement in July 1997 @ Tucson, Az.)
4) Give 2002-$2,500 bonus, like other MIO'S with same PDR's in Houston.
4) Consideration for future promotion, and 2003 Bonus like other MIO's.

BACKGROUND

I was an Ex-Southern Pacific Transportation Company ("SPTCo") Manager with "Outstanding" Performance Ratings spanning a career of 28 years in various Operating, Marketing and Joint Facility positions in 1997. I had been consistently promoted as indicated by Exh. 2 (Personal Record) and received numerous types of special recognition, compensation and assignments; including being appointed by SPTCo President Mohan to be

the SPTCo's lead negotiator for a $450 Million Peninsula right-of-way sale to the State and Counties in the San Francisco Bay area. (Exh.'s 3-6).

I was highly regarded by most of my peers as a person who could get the job done through the creation of process management based on my Air Force fail-safe (redundant system) training, formal education (including an MBA), and in-depth process training at SPTCo. In fact, I was specially selected by SPTCo VPO Lacy to be their sole "Coordinator, Productivity Improvement Program", which included multiple Terminal and Blocking studies with implementation timelines / detailed implementation processes, which were followed by the respective Service Units, after each evaluation.

LOGIC TEST NUMBER ONE:
BASED ON THE ABOVE RECOGNITION, DUTIES AND PROMOTIONS BY SPTCo, IS IT LOGICAL THAT A MANAGER OF SUCH DEPTH AND LONGEVITY WOULD DESERVE A 21% CUT IN PAY AND DEMOTION, AFTER A TWO-MONTH MERGER RELATED YARD CONSOLIDATION EXPERIMENT FAILED?

After a cross training assignments as General Manager Amtrak/Transit Systems, and Joint Facilities (where SPTCo managers negotiated with UPRR managers), I returned to the Operating Department of SPTCo as Terminal Superintendent (SrMTO) Tucson, Arizona effective 9/16/95 with a salary of $6,200 a month. After a thorough Jan-Mar 1997 review of my strong personal record and "Outstanding" performance, I was verbally selected by Union Pacific Railroad ("UPRR") to be Senior Manager Terminal Operations ("SMTO") by UPRR. After eighteen (18) months as the incumbent, as corroborated by my personnel record, I was OFFICIALLY designated by the UPRR as SMTO effective April 16, 1997, which was ONLY 2.5 months before my discriminatory demotion on July 1, 1997!

During the Arizona UP-SP Merger implementation rollout in early 1997, UPRR VPO Arthur Shoener performed his initial review of UPRR operations and interviewed several persons regarding how the operations could be consolidated or modified, which was "desirable to realize, UP-SP merger benefits". VPO Shoener reached the merger-related decision to close the phoenix flat switching operation and move "ALL flat switching" to Tucson, despite the 1% Tucson switching grade and lack of other resources,

including track capacity for that volume, an on-going twelve hour maintenance of way (M of W) curfew on both sides of Tucson, and there was no flat switching lead on the Eastend (which in 1997 required that all "tailing switch movements of any size" obtain Dispatcher authority before entering the Main Track to switch).

As in most mergers, UPRR managers were not interested in the opinions of ex-SPTCo managers. I did provide a documented list of the resources and blocking that would be required, **BEFORE ATTEMPTING TO CONSOLIDATE ALL PHOENIX WITH TUCSON SWITCHING.** That list was ignored by the 1997 UPRR corporate culture. Said culture required that the merger transaction experiment take place promptly as ordered by the hasty VPO decision without benefit of even a capacity-model study in advance.

According to the existing documentation, I expressed extreme concern regarding the fact Tucson was surrounded on both sides by twelve-hour maintenance-of way (M of W) curfews, which prohibited the operation of trains, in any direction, between the hours of 0700-1900 M-F. In simple language, the trampled playing field was cut in half (by the lack of operational time account M of W curfews and the other teams size was doubled (by consolidating ALL Phoenix flat car switching at Tucson), which was a recipe for disaster, none of which was within my decision or control!).

Under present UPRR operations, UPRR attempts to take great care with curfews and even detours trains and other activities are performed to ensure that the Terminal will survive. That was not the case in 1997, as ALL were "piling on the beleaguered ex-SPTCo management at Tucson" (to extend the metaphor of the "trampled playing field").

The merger transaction experiment was started effective May 14, 1997, which was about twenty (20) months after I had been successfully performing as "Outstanding", on my Tucson assignment. Senior UPRR management quickly realized that the two (2) M of W curfews, lack of capacity, lack of personnel, 1% grade issue, track conditions, and other Tucson resource deficiencies had created a failure, just as others and I had predicted. In desperation, capacity, process and "bullying switching experts" were flown in to show the ex-SPTCo managers how to railroad.

Experts were quickly brought to reality and had to publicly admit that it could not be done with **ALL** the Phoenix traffic coming to Tucson, including Westbound, insufficient trackage and 12' M of W curfews in both directions. During the week of June 17, 1997, confidential meetings were held to determine who would be the scapegoat, and a little over one-month into this merger consolidation experiment, my demotion and 21% pay cut decision was made by senior management. I was orally advised June 26, 1997 to be gone July 1, 1997, as UPRR wanted its own people in Tucson!

The decision to demote me was made with complete disregard for the truth; because, the **FACTS SPEAK FOR THEMSELVES!** Shoener was the genesis of this merger consolidation decision, as testified to by many witnesses. Therefore, why punish the local manager, who just happened to be in the wrong place at the wrong time?

As indicated by the web site of the BLE Union (Exh. 7), the problems at Tucson continued for several months, after my demotion, which does not match statements made in President Jerry Davis's response to my appeal (Exh. 8- see APPEAL to Davis), concerning this discriminatory demotion.

LOGIC TEST NUMBER TWO:
WHY WOULD I WRITE THE THEN PRESIDENT OF UPRR ON JULY 15, 1997 A LETTER REQUESTING A DIFFERENT JOB, WITH THE SAME $6,200/ MO. COMPENSATION, IF I HAD BEEN ADVISED THAT I HAD BEEN DEMOTED FOR DISCIPLINARY REASONS IN JUNE? THE FACTS SPEAK FOR THEMSELVES!

President Davis's letter stated on September 4, 1997 in part. (Exh. 9):
"In **JUNE,** the service levels to our customers, both external and internal, deteriorated to the point where immediate action had to be taken." and "We believe that a change in management was necessary for improvement to occur." The conflicts in Davis's letter included; but, were not limited to:

a. Service difficulties in Tucson were still roaring in September 1997 when Mr. Davis responded to me September 4, 1997 (see Exh 7 Union Web Site).
b. b. The issues keeping Tucson Terminal barely fluid in September were: 1) the 12-hour per day M of W curfews on both sides had ended,

2) THE "JUNE PROBLEM" AT TUCSON ENDED (THE MERGER CONSOLIDATION EXPERIMENT WAS ENDED JUNE 26, 1997!)

LOGIC TEST NUMBER THREE:
IF I HAD ACTUALLY BEEN DEMOTED FOR A PROPERLY DOCUMENTED AND REPORTED DISCIPLINARY REASON ON JULY 1, 1997, WHY WAS THIS ALLEGED "FACTUAL DEMOTION REASON " NOT SIMPLY STATED IN UPRR PRESIDENT DAVIS'S SEPTEMBER 4, 1997 RESPONSE TO MY APPEAL? (SEE EXH. 9)

The author of Mr. Davis's letter had so little regard (i.e. respect for employees) for my discriminatory demotion, that the response took almost two months, did not use the Quality Process to determine the root cause of the June 1997 service failure and did not even bother to address or answer my specific questions about my financial denigration for life.

President Davis's letter **CORROBORATES** that the ONE cause of my demotion was the **JUNE SERVICE FAILURE**, which was directly related to the late May 1997 merger decision to consolidate yards, without doing a capacity study in advance or going through an in-depth simulation study of issues prior to the attempted consolidation implementation merger experiment, including the postponement of the two (2) strangling M of W curfews. The late May 1997 **TOTAL** switching consolidation experiment was the result of UPRR managers, inexperienced with the territory; seeking a "quick cost cut", who would not listen to reason or perform due diligence.

I have access to the 1997 UPRR capacity study which documented, after the experiment began, that consolidation of such volume ***COULD NOT BE DONE***; especially, with Phoenix also sending ALL Mill-Run Eastbound and Westbound traffic to Tucson and M of W curfews surrounding it.

It was an impossible task! Even many prior-to-the-merger UPRR managers were also in agreement (before the yard merger consolidation experiment), that failure was the only possible outcome.

As **CORROBORATION** of the 1997 UPRR Corporate Culture, which created my arbitrary demotion, the Wall Street Journal on August 25, 1999 indicated, in part, the 1997 ***ATTITUDES AND BEHAVIOR OF***

UPRR (Exh. 10):

a. "When something happened," **YOU PULLED OUT YOUR GUN AND SHOT THE GUY IN CHARGE OF THE TERRITORY"**.

(When the merger experiment of consolidating switching terminals was ordered by VPO Shoener and failed in less than two months, I was shot!)

b. "Their culture was dysfunctional and characterized by noncommunication"

c. "Troubled…1997-98…" "freight service had collapsed, stranding Midwestern crops, snarling west coast ports and delaying shipments of goods from chemicals to paper" (The whole UPRR system was fouled).

d. "But many people blame Union Pacific management. They say Union Pacific **TRIED TO CUT COSTS DURING THE INTEGRATION, NOT HIRING PEOPLE AND CRAMMING CARS INTO FEWER YARDS"**

(Above is exactly what happened at Tucson during the merger yard **CONSOLIDATION EXPERIMENT OF MOVING ALL PHOENIX SWITCHING INTO TUCSON, WITHOUT BENEFIT OF CAPACITY, PROCESS, PROPER RESOURCE STUDY!**

e. "Meanwhile, Mr. Davidson reinforces his push for greater flexibility by showing he is willing to try anything"

(Above are great; but why ruin the Grother's lives?)

In much the same way as Enron's Vice President of Corporate Development, Ms. Sherron Watkins, believed she had a duty to advise senior management of an impending failure, I advised that this merger experiment was doomed. Not only were my warnings ignored; but also, when the experiment failed, I was discriminatorily demoted and advised to accept a 21% cut in salary at Houston, Texas, in a different sub-department, or "Hit the Street"!

In 1997, after 28 years of dedicated service, eleven "grooming moves", mainly as an Operating department manager working 12 hour plus days/nights/weekends/holidays/derailments/injuries/accidents/hazardous material releases/incidents and so forth, "I felt the 33,000 miles of Building America tm"

Based on the 1997 UPRR Corporate Culture and after the June 1997 merger switching consolidation experiment failure, senior UPRR managers undertook an aggressive program of removing, demoting, denigrating (until resigned) ex-SPTCo managers until **all ex-SPTCo Operating Officers who were at Tucson when the merger was announced were gone, for perceived discriminatory reasons.**

Masseurs. John E. Grother, H. Lawson McDowell, David L. Hampton, Paul A. Lobello, Ray Szarek and Bob Strefelder were "removed " by various means and Ex-Rock Island UPRR Service Unit Superintendent Ken C. Packard was "demoted" (BUT, **WITH NO REDUCTION IN WAGES!).** Ex-SPTCo manager Dan S. Payawall tragically died during the stress-filled twelve (12) hour plus days of this June 1997 yard consolidation transaction experiment, when his pancreatic cancer came out of remission.

THE QUESTION AT ISSUE:

Is Grother to be made whole for the lost compensation and fringe benefits which resulted from the two SRG discriminatory demotion July 1, 1997 based on UPRR's Policy that every employee has a **fundamental right to fairness and free of discrimination?**

Since the UP-SP Merger, I have been concerned for several years why I was unable to be promoted or even be transferred after years of C-NET attempts and it now appears that the reason has come forth!

On July 31, 2002, I was advised in part the following (Exh. 11):
"The online record indicates **DISCIPLINARY ACTION**" as the reason for your July 1, 1997 demotion!

You can imagine ***MY SHOCK AND CONCERN*** to find out that I have been deceived and a separate, online system exists, which has been providing information to prospective UPRR hiring managers. These prospective internal hiring managers, of course, would look no further than "demoted for disciplinary reasons", before discarding all my C-NET applications. In combination with the word "demoted" on my Official PR, my reputation has been and continues to be badly tarnished, and the damage is almost irreparable.

I have never been told anything about my "disciplinary action" (why not? – Was a "disciplinary reason created as a cover-up for discrimination?).

President Davis's letter of September 4, 1997 does not mention anything about discipline, only that service had deteriorated in June 1997 (during VPO Shoener's merger yard consolidation experiment). I had no idea there were negative remarks on some "secret-to-me", online record.

I requested a hard copy of what I was told was my "entire Personal Record" twice, to work on my UPRR resume, and there was not one word therein about "disciplinary action in 1997", or any other time. Ms. Linda S. Jensen (Exh 12) wrote, "There are no entries of discipline".

Moreover, I asked the Local HR manager Buttrill if she had knowledge of anything negative on my record, which would explain why I was demoted and she replied March 6, 2002 "The only thing I have access to is the "database information", which associates this title change with the move from Tucson to Houston"(Exh. 13a and 13b).

THE ABOVE RESPONSE COULD LEAD ONE TO BELIEVE THAT THE REASON FOR MY DEMOTION (I.E. DISCIPLINARY REASON), MAY HAVE BEEN PUT IN THE ONLINE DATABASE "BETWEEN" MARCH 6, 2002 (BUTTRILL'S STATED RESEARCH DATE) AND JULY 31, 2002 (BREWSTER'S RESEARCH RESULTS).
COULD THAT BE POSSIBLE?

WHAT OTHER EXPLANATION IS POSSIBLE FOR THE DIFFERENT RESULTS FOUND BY TWO SEPARATE HR MANAGERS?

Also, on March 7, 2002, the Local HR manager Buttrill states:

"My suggestion was to review your Personal Record. A hard copy PR 'generally' has more information than is documented in the computer" and "If neither of these suggestions produce the information ...(PR review or Former Supervisor feedback)... I don't know where you would find it." Apparently, Ms. Buttrill was not aware that the compensation section of the HR Department would have on file the 1997 Demotion Policy.

IN DIRECT OPPOSITE TO THE ABOVE ADVICE, MY HARD COPY PR INDICATED NOTHING ABOUT THE "SECRET REASON" FOR MY DEMOTION. THE "DISCIPLINARY REASON" WAS FOUND IN THE "ON-LINE SYSTEM" ON 7/31/02, AFTER MS. BUTRILL STATES SHE CHECKED "DATABASE INFORMATION" ON OR BEFORE 3/6/02 AND FOUND NO REASON FOR MY DEMOTION – WHY NOT?

The local HR manager Buttrill suggested my Tucson supervisor could advise me why I was demoted 2-SRG's. I sent four Lotus Notes, two AOL e-mails, and Certified Letter to Mr. Ken C. Packard. He has **not responded yet!**

WHAT WOULD LOGIC INFER ABOUT PACKARD'S NON-RESPONSE? (See Exh. 14a-14b unanswered requests to Packard).

Local HR manager Buttrill also suggested that I contact the EEO Group and provided their Phone number for some unknown reason July 9, 2002? At that time, I was unaware of ALL the discriminatory acts which had taken place; especially, the July 31, 2002 information that disciplinary reasons had been placed on a secret online file which affected my promotability.

Ms. Lisa Brewster was helpful and provided Exh.15 (1997 POLICY), which indicates, in part: "***IN MOST CASES THE EMPLOYEES PRESENT SALARY LEVEL IS RETAINED***". WHY WAS MINE NOT RETAINED?

I have been unable to obtain Page 2, Form 15121 data from 1997, which allegedly indicates the heinous "comments" justification provided to reduce $1,272 per month. It seems incredulous to me that such a huge pay reduction could be taken from one's fellow employee without some hard copy evidence being maintained forever, or at least some type of CD-ROM,

microfiche or other accessible file created. Surely, Mssrs. Packard and Murphy can remember what heinous activity I did, which was undisclosed to me in 1997 (or thereafter) and discriminatorily placed in the online system, creating a "secret to me discipline record", which would end my career!

Perhaps, the above managers could be asked to re-create the discipline charges for ALL to see, understand the underlying evidence, and rebut?

Would it be FAIR to know why I could not ever get promoted again (i.e. account an on-line system "disciplinary demotion" notation for all UPRR hiring Managers to review) and why I have lost over $100,000 through March, 2003 and stand to lose another estimated $200-300,000 in retirement (including Tucson Real Estate losses), assuming that my wife and I live 20 years into retirement (see Attachment 2).

My extensive research of other persons demoted or "demonstrating a significant change in job title" (which have the logical appearance of a demotion-i.e. Vice president to General Manager, etc.), indicates that I am the only person I can find during the System-wide 1997 service failures, who was forced to take a 21% cut in pay, **OR QUIT!** A partial list of managers who retained **all their wages** through the severe service disruptions during 1997 is shown on Exhibits 16 and 17 (i.e. comparative and/or statistical disparate treatment proofs indicating discrimination).

Even those prior-to-the-Merger UPRR managers who made the local Houston Newspaper related to spectacular service failures (i.e. Mssrs Charles Malone and Greg "Bubba" Garrison) ***HAD NO PAY CUTS; DESPITE THOUSANDS OF DELAYED CARS, LAW SUITS AND HUGE CUSTOMER SETTLEMENTS AGAINST UPRR (EXH. 18).***

LOGIC TEST NUMBER FOUR:

IS IT LOGICAL THAT I DID SOMETHING SO HEINOUS AFFECTING CUSTOMER SERVICE, THAT I DESERVED A WHOOPING 21% PAY CUT, WHEN ALL AROUND THE UPRR SYSTEM THERE WERE NUMEROUS, INCREDULOUS SERVICE FAILURES, WITHOUT DEMOTION PAY REDUCTIONS?

(I.E. UNJUSTIFIED EXCLUSIONARY EFFECT?)

WHY WAS I SINGLED OUT FOR A SEVEN-YEAR SALARY PUNISHMENT, FOR JUST BEING IN TUCSON, WHEN SOMEONE MADE A DECISION, WITHOUT THE QUALITY PROCESS?

The System-wide service delays in 1997 are well documented (Exh's 19-25); yet, in ALL the managers demoted, I fail to find any (at this writing), who were reduced in pay during 1997, out of hundreds interviewed.

One specific ***CORROBORATION*** of 1997 differences in the application of the official UPRR demotion policy, which is **EXACTLY ON POINT** and demonstrates clearly that others, similarly situated, were treated better is:

MESSRS. HARRY L. STARK AND JOE D. CROW WERE BOTH EX-SPTCo OPERATING OFFICERS, JUST LIKE MYSELF AND THEY WERE ALSO DEMOTED FROM HIGHER PAYING POSITIONS AND PLACED IN THE SAME INTERMODAL DEPARTMENT, IN THE SAME CITY (HOUSTON), ON THE SAME JOB (MIO), A FEW MONTHS BEFORE MYSELF; BUT, THEY DID NOT HAVE THEIR HIGHER OPERATING DEPARTMENT PAY REDUCED, WHICH IS CLEARLY DISCRIMINATORY AND APPLYING POLICY IN A NON-STANDARD MANNER TO SIMILARLY SITUATED EMPLOYEES. (I.E. INFERENTIAL DISPARATE TREATMENT)

Discriminatory intent can be inferred from the fact that similarly situated persons are treated differently in a similar employment situation.

Based on hundreds of interviews, the issue of a manager being reduced in compensation as a result of demotion was virtually unheard of in 1997. That concept was so strong; that, HR personnel issued Exh. 26A "Summary of plan Changes" effective January 1, 1999 concerning ex-SPTCo Pension Plan Rights which stated " ***IN NO CASE WILL YOUR BENEFIT UNDER THE AMENDED PLAN BE LESS THAN THE PLAN BENEFIT YOU EARNED THROUGH December 31, 1998."***

The above statement does not appear to be true in my case, as my highest pay to date is the 36 consecutive months between July 1994- June 1997, which will not be allowed in the calculation of my UPRR pension, as no monies before 1998 are included for ex-SPTCo managers. I shall be financially impaired for the rest of my life! The above quoted HR statement could only be made; if, it were believed by HR personnel ***that no one demoted would lose their wage base; which, is not true in my discriminatorily demoted case.***

Regarding any delay in submitting this request for compensation and personal record correction. I have already experienced the following partial list of facts; which I had to be exposed to before composing this request:

1. Not aware of the on-line **SECRET** reports until Jul 31, 2002, at which time I was Lotus Note advised (Exh. 11) only that an unknown-to-me online system stated "Demoted, disciplinary reasons". From that SURPRISE date until now, information has been requested and many dead-ends have been encountered in trying to obtain the facts (Exh. 26B through 26E). The latest dead-end is the comments section of ALL form 15121's in 1997 have been shredded after retaining only page one data.

2. After just requesting my "Official Personal Record" in November 2001 to determine why I was "not promotable", I was instructed to submit to two "random drug tests" in a row (Feb 2 and May 2, 2002). These tests were only separated by that much time because I was on a previously scheduled April vacation. Such close timing between "random tests" seems statistically implausible, after 33 years of dedicated service without a single random drug test. These have the appearance to me of being retaliation, harassment and continuing discrimination, for simply just requesting my Personal Record!

3. Although my PDR was identical with my two peer MIO's at Settegast and Englewood (both in Houston), they both received a $2,500 bonus February 2002, for their 2001 performance (which was identical to mine), indicating a continuing pattern of discrimination.

4. Advised by my new Houston Supervisor, Mr. Don F. Fryar on Saturday, August 2, 1997 while driving Settegast to Englewood Ramp, in part:

"YOU CAN NOT WORK AROUND HERE DURING ANY TYPE OF LAWSUIT, AS THEY WOULD MAKE LIFE UNBEARABLE FOR YOU." (NO WITNESSES OF COURSE BUT INTIMIDATING, HARASSING AND DISCRIMINATORY THREAT).

5. Even the local HR representative Buttrill was so "disturbed" by my dead-end search for facts about my discriminary demotion, that she referred me 7/09/02 to the EEO group for some unknown EEO reason (Exh. 13b).

6. Requested training on the Budget and other Computer Drive functions needed to be understood before being considered for promotion to Senior MIO or SeniorMTO at Englewood or anywhere on the System. Fryar failed to provide the training requested and appeal to Fryar's boss ended with a continuation of Grother on the night shift and less chance of promotion!

I AM TRYING TO RECONCILE THE ABOVE PARTIAL LIST OF DISCRIMINATORY STATEMENTS, ACTIONS AND BEHAVIORS, WHICH HAVE OCCURRED, WITH THE BELOW PUBLICLY PUBLISHED POLICIES OF UPRR.

THE PUBLICLY PUBLISHED POLICIES OF UPRR:

1. UPRR web site – General Public – Diversity (Exh. 27)

"Policy and Practice"

"A DISCRIMINATION FREE WORKPLACE AND FAIR TREATMENT ARE FUNDAMENTAL RIGHTS OF ALL UNION PACIFIC EMPLOYEES".

I HAVE BEEN DENIED THIS FUNDAMENTAL RIGHT!

To partially illustrate, it **is not fair to enter undisclosed data into an online system, which is used by internal managers who hire and not make that same information available to the affected employee for rebuttal. It is not fair to enter data in a discipline system without telling the employee about said entry. It is not fair to take away my monthly income when hundreds of other managers were involved in locations with more**

severe service failures in 1997. It is not fair to treat similarly employed persons with different policies, concerning demotion and so forth.

2. UPRR web site-General Public-Diversity (Exh. 28)

"Equal opportunities are afforded to ALL employees"

" ...employment without regard to....status as a Vietnam-era Veteran..."

"This policy applies to all terms and conditions of employment, including, but not limited to, ... demotion, ... transfer, ...compensation..."

(AS HAS BEEN FOREVER NOTED IN MY PERSONAL RECORD AND MY INTERNAL RESUME, I SERVED AND RETIRED WITH AN HONORABLE DISCHARGE FROM THE USAF RESERVE, AFTER SERVICE DURING 1969-71 ON ACTIVE DUTY AND THEREAFTER AS AN ACTIVE RESERVIST, INCLUDING USAFR RETIREMENT.

3. UPRR Website-Executive-Business Conduct Guidelines (Exh. 29)

"Simply stated, ***OUR POLICY REQUIRES EVERY UNION PACIFIC RAILROAD COMPANY EMPLOYEE TO PRACTICE HONEST, INTEGRITY, AND FORTHRIGHTNESS IN EVERY ASPECT OF DEALING WITH EMPLOYEES, ...***"

(I WAS NOT TOLD THAT I WAS DEMOTED FOR DISCIPLINE, ADVISED OF ANY DISCIPLINE PROBLEM, GIVEN AN OPPORTUNITY TO CONFRONT MY ACCUSERS, DEFEND MYSELF IN ANY MANNER, OR BE PLACED ON A DEVELOPMENTAL ACTION PLAN TO CORRECT ANY PERFORMANCE ISSUES).

4. THE 2002 POLICY FOR VISION AND VALUES (Exh. 30)

"We put all issues on the table and attempt to resolve them through a constructive debate a challenge", which should include resolving this compensation issue without fear of reprisal. The 2002 Policy also states:

" ... do not kill the messenger bearing bad news". This already happened to me in 1997, when I simply warned my UPRR Tucson supervisor, that the merger switching consolidation experiment of moving ALL Phoenix switching into Tucson could not be done.

5. THE 1997 VISION AND VALUES (Exh. 31– DESKTOP DISPLAYED)

The 1997 VALUE DESKTOP STAND was prominently displayed on my desk in early 1997. The 1997 Values included, in part, the following and other values shown on Exhibit 31, WHICH I GOT TO STARE AT, WHILE I WAS BEING DISCRIMINATORILY DEMOTED:

"TREAT OTHERS LIKE YOU WANT TO BE TREATED"

(Those who cut my wages 21% would have NOT WANTED THAT TO HAPPEN TO THEM AND SUCH REDUCTIONS DID NOT OCCUR TO OTHER MANAGERS WHOSE TERRITORIES WERE INVOLVED IN SEVERE SERVICE FAILURES WITH HUGE SETTLEMENTS, LAWSUITS AND GRID-LOCKED SERVICE OVER MANY MONTHS!)

"TRY NEW IDEAS...ENCOURAGE CHANGE"

(I WAS FINANCIALLY RUINED AFTER VPO SHOENER HAD AN UNRESEARCHED MERGER IDEA TO CONSOLIDATE ALL YARD SWITCHING FROM PHOENIX TO TUCSON'S 1% GRADE).

"TRUST IS ESSENTIAL"

(THE ABOVE VALUES AND OTHERS WERE NOT HONORED AS PUBLISHED IN 1997. CAN ONE NOW OBTAIN FAIRNESS IN 2002?)

6. BUSINESS CONDUCT POLICY OF UPRR AS STATED BY 'UP ONLINE' JUNE 21, 2002 (Exh. 32) – IN PART:

"IN THE CONDUCT OF BUSINESS, EACH EMPLOYEE MUST ADHERE TO HIGH ETHICAL **STANDARDS**. ***THESE INCLUDE HONESTY (I.E. TRUTHFUL DEALING WITH EVERYONE, INCLUDING ...FELLOW EMPLOYEES) AND FAIRNESS (I.E.***

TREATING ANOTHER IN THE SAME MANNER AS YOU WOULD EXPECT TO BE TREATED."

(WOULD MESSRS. PACKARD AND MURPHY WANT THEIR WAGES REDUCED 21% IN 1997 AND STILL NOT BE BACK TO THEIR 1995 LEVEL OF COMPENSATION UNTIL 2004 OR LATER?)

7. LOTUS NOTE February 4, 2002 to ALL employees from President and COO Ike J. Evans (**can** this be used to evaluate my Attch 2 request?):

"Internally, all of us must heighten our efforts to '***WALK THE TALK***'. TO ME, ***THIS MEANS MATCHING THE EVERYDAY BEHAVIOR WITH THE VISION AND VALUES OF THE COMPANY. THIS IS A PREREQUISITE TO US ADVANCING INTO THE HIGHEST RANKS OF U.S. BUSINESS."***

8. UPRR reminder card received with reduced paycheck October 22, 1999:

"ALL EMPLOYEES WILL BE TREATED FAIRLY AND WITH RESPECT" (Exh. 33).

9. President Evans's LOTUS NOTE June 2002 to ALL employees concerning UPRR reputation states:

"WE WANT TO ***ENHANCE THE REPUTATION OF UNION PACIFIC AND THE MEN AND WOMEN, LIKE YOU, WHO WORK HARD EVERY DAY TO MAKE US ONE OF THE BEST COMPANIES IN THE WORLD".***

(I HAVE NOW WORKED VERY HARD FOR 33+ YEARS, ESPECIALLY AS A 12-HOUR DAY- PLUS OPERATING OFFICER; BUT MY REPUTATION HAS BEEN RUINED BY THE TUCSON DEMOTION PIGEONHOLING REMARKS PLACED IN THE ONLINE SYSTEM. MY SEVERE CUT IN WAGES WAS EXTREMELY UNFAIR AS: OTHER EX-SPTCo OPERATING MANAGERS WERE DEMOTED TO POSITIONS IN INTERMODAL AT THE SAME CITY (HOUSTON), THE SAME JOB AND THEY WERE NOT CUT IN WAGES; AND

PRIOR-TO-THE-MERGER UPRR MANAGERS, WHO WERE LOCATED AT SERVICE FAILURE LOCATIONS WHICH RESULTED IN LAWSUITS AND CUSTOMER CLAIM SETTLEMENTS WERE NOT REDUCED IN COMPENSATION WHEN DEMOTED/TRANSFERRED!

MY PERSONAL 1997 ACTIONS DID NOT RESULT IN ANY LAWSUITS OR CUSTOMER SETTLEMENTS PER MY DOCUMENTATION!

10. COMPARISON BETWEEN THE "UNKNOWN DISCIPLINE DEMOTION" EVOKED ON MYSELF BY UPRR IN 1997, FOR JUST BEING IN THE WRONG PLACE WITH DISCIPLINE ISSUED TO OTHERS IN "COMMAND ROLES", INCLUDING MILITARY COMMANDERS WHO WERE "IN COMMAND" WHEN ***LOSS OF LIVES OCCURRED BY ACCIDENTS; BUT, THESE "MANAGERS" HAVE NOT BEEN FINANCIALLY AFFECTED FOR LIFE, LIKE ME:***

A. Exh. 34 is result of high profile NEWSPAPER case of USS Greenville COMDR. Scott Waddle who was "in command" when his submarine surfaced and NINE (9) JAPANESE SAILORS WERE KILLED. THE NAVY SAID WADDLE WILL RECEIVE HIS PENSION AND FULL RETIREMENT PAY.

B. Exh. 35 concerns Colonel Larry New, who was Commander at Nellis AFB 57th Operations Group when ***TWELVE (12) AIRMEN WERE KILLED.*** After a temporary sideline to a staff position account MEDIA ***SCRUTINY, HE HAS NOW BEEN SELECTED AS A GENERAL.*** NO LOSS OF PAY OR RETIREMENT BENEFITS OCCURRED.

C. Exh. 36, Mr. Steve Clark, prior Attorney General of Arkansas and Candidate for Governor of Arkansas in 1990 was found guilty of using the State's credit card (felony conviction). In June 2000, he was given ***A SECOND CHANCE BY TEXAS BOARD OF LAW EXAMINERS, WHO ALLOWED HIM TO TAKE THE TEXAS BAR EXAM BECAUSE " WE BELIEVE IN REHABILITATION IN TEXAS AND YOU LOOK LIKE YOU'VE HAD ENOUGH"***

11. Exh. 37 is urging employees, as a paycheck insert received 4/26/02:

"IT'S TIME AMERICA HEARD YOUR STORY"
I HAVE VERY BRIEFLY AND PAINFULLY TOLD MY STORY. I DO NOT WANT TO TELL IT AGAIN; THEREFORE, I LOOK FORWARD TO A FAIR RESPONSE FROM UPRR.

12. LOTUS NOTE 8/8/02 FROM PRESIDENT & COO IKE EVANS TO ALL EMPLOYEES:

"***FOR OVER 140 YEARS, THE MEN AND WOMEN AT UNION PACIFIC HAVE PROVEN THAT THEY CAN BE TRUSTED TO DO WHAT'S RIGHT"***

13. **PARTIAL LIST OF FAIRNESS QUESTIONS FOR THE REVIEWERS OF THIS COMPENSATION REQUEST TO CONSIDER:**

- What was the Operating Department's and or UPRR's record in 1997 of applying my same discipline or punishment to others, who had been alleged to have violated the same rule, standard or conduct?

- Why was I given NO NOTICE OF INADEQUATE WORK or performance standard, including the possible consequences of failure to comply or opportunity to respond? Why no PDR or counseling sheet of any type issued to me before leaving or to my demoted duty station?

- Why was there no disciplinary issue raised on ANY KNOWN TO ME performance appraisals and no previous disciplinary actions?

- Why have I never been made aware of any investigation, documentation of poor performance, or given a defined time period and guidelines in which to correct an alleged deficiency?

- Did UPRR conduct a thorough investigation, including adequate, impartial investigation of the multiplicity of factors affecting performance at Tucson Terminal (root cause analysis) before making a decision about taking an alleged "disciplinary action"?

- What evidence supports the alleged disciplinary reason, including allowing myself an opportunity to respond to the charges? Was the investigation of the alleged infraction FAIR and OBJECTIVE?

- Was truly substantial proof of misconduct or performance discrepancy gathered, not flimsy or slight, to form the alleged basis for taking disciplinary action (i.e. who are the witnesses and why was I not afforded an opportunity to confront the witnesses against me)?

- Have similarly situated employees (similar records and alleged infractions) received the same discipline (i.e. two SRG reductions)?

- What was the Operating Department and / or UPRR's record in 1997, or anytime, for taking "similar disciplinary action" for this type of infraction?

- Were ALL EMPLOYEES held accountable for the performance standards established for their positions?

- Was the discipline assessed reasonably related to the seriousness of the issue? Was it reasonably related to my personal record (i.e. length of service-28 years and overall performance)? Does a minor infraction merit harsh discipline for a lifetime?

Whomever the decision makers are concerning my Attachment 2 compensation request, please consider my "fairness MANTRA":

"HOW WOULD YOU WANT TO BE TREATED AS THE RESULT OF BEING IN THE WRONG PLACE, AT THE WRONG TIME, WHEN A TWO-MONTH MERGER YARD CONSOLIDATION EXPERIMENT WAS ORDERED WITHOUT CAPACITY, RESOURCE AND PROCESS STUDIES? WOULD YOU WANT A 21% CUT IN WAGE, SEVERELY REDUCED RETIREMENT AND A RUINED CAREER?

LOGIC TEST NUMBER FIVE:
IF I WERE PROPERLY ADVISED IN 1997 THAT I HAD BEEN DEMOTED FOR SOME ALLEGED HEINOUS REASON WHICH WOULD BE SHOWN ON MY RECORD AS "DEMOTED FOR

DISCIPLINARY REASON", WHY WOULD I HAVE THE GALL TO BE REQUESTING "TOTAL FAIRNESS IN COMPENSATION TODAY", AS I STILL DO NOT EVEN KNOW WHAT COMMENTS ARE HIDDEN IN THE "15121 COMMENTS SECTION", AS IT HAS BEEN STATED FORM 15121 DOES NOT APPEAR TO BE RETRIEVABLE (Exh. 26C).

14. On November 14, 2002, Exh. 39 was sent to you, and you returned a voice mail November 21, 2002 that the issue of determining why I was demoted in 1997 and reduced two SRG's had been referred to Mr. Brad King (first discipline endorser for 1997). You have now advised the Mr. King and Mr. John Holm (spelling?) have no recollection of my financial ruin Form and Mr. Packard states it was a confusing time and something should have been sent to me or provided to me in the form of a PDR. At this writing, I am concerned that Ms. Nancy Quinn will "somehow find" some long lost file that "should have been sent to you" or some other pretextual documentation that was NOT MADE AVAILABLE IN 1997. It is my belief that a thorough investigation of "unbiased witnesses" will rebut any pretextual allegations offered at this late date, especially after the comments section document, Page 2 of Form 15121 (that provided the "alleged heinous reason(s)" for a 2 SRG discriminatory demotion), has now been shredded.

15. Exh. 40 indicates another "lack of response issue" wherein the Pension Department has not been able to answer my questions regarding the lifetime of financial denigration that was accomplished by my July 1997 discriminatory demotion. Since SPTCo managers do not start calculating Pension Benefits until January 1, 1998 per the PLAN, my UPRR Pension will be undercompensated during the remainder of my life due to my discriminatory demotion effective July 1, 1997.

Despite the above partial list of actions and statements, I am grateful to be a member of the UPRR Team which is "Building America" tm, and I continue to believe in being a Team Player (Exh. 38).

NONETHELESS, IN ACCORDANCE WITH UPRR POLICY, PLEASE CONSIDER THIS LETTER AS:

1) OFFICIAL NOTICE that I am of the belief that discriminatory and unfair actions have taken place against me based on my **VIETNAM ERA**



VETERAN status. One reason is referred to herein (i.e. denied an equal opportunity for promotion consideration by secret-to-me online data stating I was demoted for "disciplinary reasons", ***WHICH WAS AVAILABLE TO MANAGERS WHO HIRE OR PROMOTE),*** and other actions and statements which may be further detailed, if time and circumstances permit or require.

This is also OFFICIAL NOTICE that I have received Ethnic Slurs from my present supervisor, Mr. Don F. Fryar, complete with intimidating threats should said slurs be reported. The latest Ethnic Slur against persons of German descent, which included witnesses, was September 18, 2002 at 0945. Fryar asked me twice "ARE YOU A NAZI?" I did not respond. Witnesses were Quality Terminal Services (QTS) contractor personnel, Manager Roy Daily and Leadman Jason Tingle. Since UPRR signs the QTS invoices for lifts and so forth, I am uncertain if the above will be afraid to truthfully answer separate questioning as Fryar can usually intimidate QTS (I.e. Fryar obtained a job for son Jeff at Englewood as QTS Foreman for a few months ending late November 2002, when Jeff was hired by the UPRR).

2) A request for Compensation Reimbursement payment as shown on Attachment 2 (see page 4 of 6, line "Amount of Compensation Requested").

3) Request implementation of ALL "**COMPENSATION AND FAIRNESS" ISSUES STATED ON PAGE 1 HEREOF.**

I had intended this letter (which has been a work in progress for a considerable time, based on constant dead-ends and newly forthcoming data) for Ms. Kathleen Vance; but, your efforts to determine the truth regarding who discriminatorily placed discipline on my record, reach a conclusion based on the facts, consider compensation for this UNFAIRNESS, ETC., ARE REFRESHING.

IN COORDINATION WITH MS. VANCE AND/OR OTHER HR EXPERTS, PLEASE ADVISE WHAT CAN BE DONE ON OR BEFORE FEBRUARY 1, 2003 TO CORRECT THIS LIFETIME EMOTIONAL AND FINANCIAL DENIGRATION, WHICH RESULTED FROM THE ABOVE LIST OF UNFAIR AND

DISCRIMINATORY ACTIONS (AS ONLY BRIEFLY AND PARTIALLY OUTLINED ABOVE).

Should anyone have any questions, I can be reached 1730-0530 Monday-Friday at 713-678-5303 after I return from disability for Pituitary Tumor Surgery or between 1400-1700 CT at 281-359-5667.

Enclosures:
Exh 1-40
Attach 2

Sincerely,

JOHN GROTHER

Subj:	CAPACITY ANALYSIS AT TUCSON 1997-2003
Date:	1/6/03 11:23:29 AM Central Standard Time
From:	Johnace51
To:	ButchEthington@UP.com

Mr. Ethington,

Concerning the issue of my performance at Tucson circa 1997:

1. Would the Capacity Model Department consider either review their 1997 notes on the inability of Tucson to switch ALL East and West Traffic from Phoenix, Pichacho and LAPXM at Tucson on its 1% grade without the present E/E lead extension; or, use 2002 data with ALL E/W TRAFFIC coming to Tucson for flat switching, including any Pichacho setouts which were not authorized by Management in 1997?

I believe this would indicate clearly what an impossible task was experimented with; especially, with two M of W curfews in effect on either side of Tucson.

2. What specifically was so heinous about my PERSONAL JUNE 1997 PERFORMANCE compared to my "exact MIO peers" at Houston who had no salary reductions; and, the newsworthy failed service areas, where the U.P. paid huge customer settlements and Lawsuits and yet the pre-merger Managers of U.P. experienced no wage reductions?

PLEASE ADVISE HOW THIS FAIRNESS ISSUES CAN BE RESOLVED?

JOHN GROTHEER

Mr Ethington,
In case you
didn't get
these AOL
emails.
Thank you
JEG

, 2003 America Online: Johnace51

Subj: CORROBORATION OF 1997 PERFORMANCE
Date: 1/4/03 8:29:48 AM Central Standard Time
From: Johnace51
To: ButchEthington@UP.com

MR. ETHINGTON,

1) REGARDING A LIST OF UNBIASED PERSONS WHO SHOULD BE ABLE TO CORROBORATE MY PERFORMANCE IN LATE MAY-JUNE 1997 ACCOUNT THEY WERE ALSO EYE WITNESSES TO THE SWITCHING NIGHTMARE ON A 1% GRADE, THE FOLLOWING PARTIAL LIST IS SUBMITTED:

(YOU MAY NEED TO ASSIST THEIR MEMORIES BY ADVISING THEM THAT THIS WAS THE MERGER RELATED YARD CONSOLIDATION EXPERIMENT TO MOVE ALL THE FLAT SWITCHING FROM PHOENIX TO TUCSON WHILE WE HAD 12 HOUR M OF W CURFEWS IN EFFECT ON BOTH SIDES OF TUCSON, NO AUTHORITY TO AUGMENT ADDITIONAL PERSONNEL, AND NO SWITCHING LEAD EXTENSION ON E/E.)

DAVID L. HAMPTON: EX-OPERATIONS MANAGER FOR SPTCO & U.P., NOW EAST END CONDUCTOR TO EL PASO.
WAS MTO IN MAY-JUNE 1997.

R.L. "BOB" STREFELDER: EX-ROAD FOREMAN OF ENGINES & SELECTED AS MOP FOR U.P.. AWARE CONGESTION & PERSONNEL ISSUES CREATED BY CONSOLIDATION OF YRDS.

RAY SZAREK: EX-RF FOR SPTCO & MOP FOR U.P.
NOW TUCSON ENGR; BUT, MANAGER DURING 1997 PROBLEMS WITH MANPOWER AND CONGESTION.

PAUL A. LOBELLO: EX-OPERATIONS MTO FOR SPTCO & U.P.;
NOW WITH KCS IN ARK. OR LOUISIANA. MTO IN 1997.

LEE R. HOLSINGER: EX-SPTCO OPS & MECH MGR.
WAS CONDUCTOR IN 1997

TOM F. MOORE: UTU REP IN 1997

JIM CRITCHLEY: UTU REP IN 1997

KEN KROEGER: BLE DIV 28 REP IN 1997

ANY MEMBER OF THE 1997 SAFETY COMMITTEE.

2) REGARDING U.P.'S WEBSITE UNDER "GENERAL PUBLIC", DIVERSITY, "AFFIRMING DIVERSITY", U.P. STATES UNDER POLICY AND PRACTICES:

UNION PACIFIC EXHIBIT 52
PAGE 31 OF 34

"A DISCRIMINATION-FREE WORKPLACE AND FAIR TREATMENT ARE FUNDAMENTAL RIGHTS OF ALL UNION PACIFIC EMPLOYEES"

IT IS MY HOPE THAT AFTER INTERVIEWING SOME OF THE PERSONS ABOVE, THE GROSS LACK OF FAIR TREATMENT AND LACK OF BUSINESS ETHICS (I.E. FAIRNESS) WHICH WAS PERPETRATED AGAINST ME WILL BE CLEAR AND WE CAN RESOLVE THIS ISSUE QUICKLY OF UNFAIRNESS.

SIMPLY BASED ON THE FACTS WHICH ARE NOW KNOWN, IT IS CLEAR THAT SOMETHING VERY UNUSUAL OCCURRED AND NO ONE WANTS TO STEP FORWARD A CLAIM A PART IN THIS UNFAIRNESS. THEREFORE, IT MUST BE CLEAR ALREADY THAT AN INJUSTICE HAS BEEN DONE BY THE 1997 COMPANY'S CULTURE AND THE ORGANIZATION NOW NEEDS TO DO THE RIGHT THING FOR THE EMPLOYEE.

John Gaither

VIA LETTER FOR DELIVERY ASSURANCE

Subj:	FOLLOW-ON QUESTIONS
Date:	1/3/03 4:24:15 PM Central Standard Time
From:	Johnace51
To:	ButchEthington@UP.com

GROTHER

MR. ETHINGTON,

AFTER OUR CONVERSATION 1/3/02 @ 1400, I WAS REVIEWING WHAT YOU HAD SAID, AS RELATED BY MR. PACKARD WHEREIN HE STATED:

"WE LOOKED AT A LOT OF DIFFERENT PEOPLE AND OTHER PEOPLE PERFORMED BETTER"

(AS A RESULT OF THIS ANALYSIS, I WAS DEMOTED $1,272/MONTH WHEN UP'S 1997 VISION AND VALUES STATEMENT SAID "TREAT OTHERS LIKE YOU WANT TO BE TREATED" AND OTHERS WERE BEING DEMOTED AND TRANSFERRED WITHOUT ANY CUT IN WAGES, INCLUDING MY TWO PEERS AT ENGLEWOOD RAMP?).

1. ABOVE PACKARD STATEMENT IS NOT CONSISTENT WITH MYSELF BEING SELECTED BY PACKARD FOR SRMTO LESS THAN TWO MONTHS BEFORE THE DECISION TO SEVERELY DEMOTE ME WAS REACHED.

IT IS ALSO NOT CONSISTENT WITH MR. PACKARD LEAVING ME A VOICE MAIL A FEW WEEKS BEFORE THE DEMOTION STATING WE WERE DOING A GREAT JOB GIVEN THE CONSOLIDATION EXPERIMENT AND THE CURFEWS ON BOTH SIDES OF TUCSON AT THAT TIME.

2. ASSUMING THAT ONE'S PERFORMANCE WAS ACTUALLY LESS THAN SOMEONE ELSE'S, IS THAT A REASON TO REDUCE YOUR SALARY BY TWO SRG'S OR $1,27??

MY REPLACEMENT RECEIVED A SIGNING BONUS TO $6,338 PER MONTH?

3. IF 2 ABOVE IS CORRECT, WHY WERE THE WAGES OF OTHER MANAGERS NOT REDUCED DURING THE 1997 SERVICE FAILURES, ACROSS THE SYSTEM, WHEN THOSE MANAGERS WERE DEMOTED AND TRANSFERRED BECAUSE OTHER PEOPLE SELECTED FOR THEIR JOBS, MAY BEEN PERCEIVED AS "ABLE TO PERFORM BETTER"? HAVE

LASTLY, DID ROYCE HARDIN EVER DETERMINE WHY HE DID NOT HAVE AN OPPORTUNITY TO RESPOND TO FOUR OF MY 5 CONFIRMED JOB REQUESTS?

ALSO, WHY DID I RECEIVE A "FORM RESPONSE" FOR THE MYO POSITION AT TUCSON INDICATING THAT A MORE QUALIFIED PERSON HAD BEEN SELECTED (ESTIMATED AT 29 YEARS OLD WITH AUTO FACILITY EXPERIENCE) , WHEN I HAI WORKED A JOB TWO LEVELS OF DIFFICULTY (SRMTO) ABOVE THAT FOR 22 MONTHS AT TUCSON?

UNION PACIFIC EXHIBIT 52
PAGE 33 OF 34

D

IN ADDITION, I HAD PERFORMED AS THE SOLE ASSISTANT DIVISION SUPERINTENDENT FOR THE SPTCO ON THE LARGEST DIVISION IN THE US [redacted], YUMA TO FRESNO AND ST. LUIS OBISPO FOR EIGHTEEN MONTHS.

HOW COULD I NOT BE QUALIFIED TO BE AN MYO AT TUCSON?

PLEASE ADVISE.

SJRG

UNION PACIFIC EXHIBIT 52
PAGE 34 OF 34

NATIONAL MEDIATION BOARD
NEW YORK DOCK ARTICLE IV ARBITRATION COMMITTEE
JOHN E. GROTHER,
v.
UNION PACIFIC
RAILROAD COMPANY
1301 K Street NW.
Washington, D.C.
Tuesday, October 12, 2004
The HEARING in this matter began at approximately 10:27 a.m. pursuant to notice.
BEFORE:
LYNETTE A. ROSS
Neutral Committee Member

Page 2

APPEARANCES:
Grother Committee Member:
GORDON P. MacDOUGALL, ESQUIRE
Law Office of Gordon P. MacDougall
1025 Connecticut Avenue NW., Suite 410
Washington, D.C. 20036-5423
(202) 223-9738
Union Pacific Committee Member:
WILLIAM E. LOOMIS
General Director
Employee Relations Planning
Union Pacific Railroad Company
1400 Douglas Street, Stop 0710, Room 332
Omaha, Nebraska 68179-0710
(402) 544-3000

Page 3

CONTENTS

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
Ken Packard	65	82	86	
John Grother	107	117		
	182			
	195			

EXHIBITS:	MARKED	RECEIVED
No. GH25 - [Not Identified]	7	7
No. GH26 - Exhibits Cross-Reference	7	7
No. GH27 - Moore Statement	17	17
No. GH28 - Grother Reply Statement	17	17
No. GH29 - Hearing Notice	218	218
No. UH44 - [Not Identified]	6	6
No. UH45 - [Not Identified]	6	6
No. UH46 - [Not Identified]	6	6
No. UH47 - Interstate Commerce Commission (ICC) Decisions	125	125
No. UH48 - Haskell Bell ICC Decision	126	126
No. UH49 - Curley Award Decision	178	178
No. UH50 - Collective Bargaining Agreement Excerpt	127	127

Page 4

PROCEEDINGS

MS. ROSS: I'd like to have it on the record that I have the authority to be here. Good morning. We're here for an arbitration to determine three or four issues related to a New York dock matter arising on the Union Pacific Railroad and raised by Mr. John Grother. Included in both exhibits is an arbitration agreement that sets forth the process of today and I would first like to just affirm from both parties that they stipulate that with respect to this hearing that I have jurisdiction and authority to hear the case and issue a binding decision in this matter.

MR. LOOMIS: Union Pacific so stipulates with the understanding that your authority is bound and described by our agreement which we both submitted.

MS. ROSS: Thank you.

MR. MacDOUGALL: We agree, the employee does, with the qualifications set

Page 5

forth in our submission on page 7. In other words we're not in favor of the arbitration. We'd rather have a court of record in accord with the STB but, not having prevailed on those points, we're agreeable to you as the neutral of the committee.

MS. ROSS: Thank you. In an off the record conversation the parties agreed to submit exhibits that arose subsequent to the filing of the formal submissions that we received in mid-September. We decided that any exhibits submitted in this matter subsequently for the Union Pacific will be designated as UH for Union Pacific Hearing exhibit. We're starting with Exhibit 44 and, Bill, would you like to move these exhibits into evidence?

MR. LOOMIS: Well, I'm not sure the exact language that I used on that but Union Pacific would like to introduce a six-page document that has been distributed and reviewed by the parties as UH44, would like

Page 6

to introduce a two-page document, actually a three-page document but the middle page was deleted on account of being duplicate, as UH45, and a single-page document as UH46 and I'd like to move these part of the record and part of the carrier's submission.

(Exhibits Nos. UH44-UH46 were marked for identification and received in evidence.)

MS. ROSS: Okay, so entered. The exhibits entered into the record today by Mr. Grother will be designated as GH, and we're beginning today with GH25.

MR. MacDOUGALL: I'd like to introduce as Exhibit GH25 an eight-page exhibit on my letterhead dated September 21, 2004. And I'd also like to have identified an exhibit consisting of six pages entitled "Cross-Reference to E.J. Grother and UP Submissions Exhibits" identified as GH26.

(Exhibits Nos. GH25 and GH26 were marked for identification and

Page 7

received in evidence.)

MS. ROSS: We're all set on that —

MR. MacDOUGALL: I'd like to move these be received in evidence.

MS. ROSS: So entered into the record.

MR. LOOMIS: I have a question.

MS. ROSS: If anyone wants to go off-record just —

MR. LOOMIS: He mentioned an eight-page exhibit, a GH25. I count ten.

MS. ROSS: I count ten as well.

MR. MacDOUGALL: You are correct.

MS. ROSS: GH25 is a ten-page exhibit.

MR. MacDOUGALL: I'm sorry. I apologize.

MS. ROSS: I think I may garble the tape here but if anyone feels a need to go off-record or recess just so state and we'll proceed that way. As I mentioned earlier, I had a concern that this case be unfolded in a

Page 8

way that's fair to the parties and logical. And to that extent it appears to me that we do not have a joined issue. Mr. Grother has stated three issues in his submission on page 2 and the Union Pacific has its statement of the issues or questions of the issues phrased a little differently on page 2 of their submission.

If these issues are going to stand as submitted I can formulate a statement of issue in my decision and that's something customary when parties can't agree on identical issues. What I noticed from the briefs or the submissions is that Mr. Grother's submission really follows, and I know this will be discussed in their case, Ms. Ahart's response of July 18, '03, and that the issues concern whether the transfer was a demotion, whether the job was managerial in nature, and whether the claim should be dismissed under laches.

Following that format as I see it,

Page 9

Mr. Grother has presented his case on the first issue of whether there was a causal connection, the second issue is whether he was an employee within the meeting of New York Dock, and the third is whether the doctrine of laches bars any substantive consideration.

So I think there's a parallel there. I don't think the issues are far out but my proposal is that we follow Mr. Grother's three-step process. And in that regard if we take the first issue as to whether the employee was adversely affected that Mr. Grother proceed first on the causality with response by UP on the nontransaction defense. And then, of course, Mr. Grother would be able to respond and we can go back and forth until we feel this first issue has been argued and weave

the witnesses in as needed or the new statement from the UTU.

And then on the second issue on the

Page 10

issue of managerial I would propose that the UP take the ball there going first on the managerial issue with Mr. Grother responding and again going back and forth and some of the managerial may be discussed during issue number one.

And finally on issue number three I would propose that the UP go first on the laches argument with response by Mr. Grother. So I invite comment on that or this is what you feel is a way to unfold this case that makes sense and allows for appropriate response and we can just start.

MR. LOOMIS: Well, normally Mr. Grother as the moving party at least with regard to the employee issue normally and traditionally is expected to present the first argument. This case is a little bit short on conferencing because it was presented in a letter and then there was no conference held or requested. You mentioned the three items in Marilyn Ahart's letter.

Page 11

There wasn't an opportunity for the parties to get together and attempt to flesh out a question at issue but I do not have a problem with UP taking the lead in the laches issue because the argument could be made that UP is the mover on that argument. But the mover on the argument that he was affected by the merger and that he was in fact covered under the terms of New York Dock. Grother's the moving party and Union Pacific thinks he should present the lead argument on those two issues.

MR. MacDOUGALL: First, as to the three issues as opposed to two issues I think there's no real difference. I use the word "causation" and job classification. They use one word, adversely affected the employee, which has two concepts in it. A person has to be affected by the merger is the first thing. The second, is he qualified as an employee to get the conditions? So since we put it in two words and

Page 12

they put it in one word, displaced employee, if you look at the definition of "displaced" it means affected, placed in a worse position as a result, so there's not that much difference in the issues.

As to going forward we've made submissions in writing and I just wondered whether it has to be bifurcated again or trifurcated. I would think that we give you our reply statements and put Mr. Packard on the witness stand. He's there for the causality issue and for the job classification or adversely affected employee, whichever way we want to call these things.

Ordinarily the burden of proof would be on the carrier for the causality. If you struck New York Dock, we just name the transaction, name the events, the carrier has the burden of coming forward. And the same with laches. Laches is an equitable defense in any case, arbitration or court case. That

Page 13

again is on the carrier. And as to the middle thing, as to what the job classification is, I don't know who has the burden.

I don't know if we need to go in three stages. I don't know. See what Loomis thinks about it. I just thought we'd distribute the rest of what would be a reply, distribute it in writing, although we can put Grother on the witness stand and just repeat what we're distributing in writing and get on with it. I don't see that there is much to discuss after argument. In other words we've you've done it pretty well.

I think the purpose of this thing today is to make sure we get all the evidence we're going to have and then we can argue it on the briefs. We can say what the evidence shows. In fact we could even refine the statement of the issues but I think we're pretty close on the issues.

MS. ROSS: Did you want to want to

Page 14

refine the issue or —

MR. LOOMIS: I think we really need to move this through and to the extent that we will have ample opportunity to make rebuttal comments I can live with your proposal the way you laid it out.

MS. ROSS: Okay, why don't we go that way? And I should have prefaced that my proposal is not constructed in a way as to apportion burden of proof. I know that's up for grabs in a couple of these areas and that can get sorted out later. So we could say that the way we will lay this out is not prejudicial to burden of proof issues at this point but just to make this an orderly and, as Mr. MacDougall said, try to get on with this and make sure everybody has what they need to supplement what we have today.

Do we need to take a break before we get started?

MR. MacDOUGALL: Before we get started I'd like to distribute these things

Page 15

now. I don't want to hold our substantive stuff. Hopefully we can finish this today and distribute what Mr. Grother is saying in his reply or what he will say when he gets on the witness stand and also Tom Moore's thing. We'd be glad to hand this out now and not have any surprise.

MS. ROSS: Well, should we hand this out now since it would be consistent with Mr. Grother going first on at least the first issue and take a pause to look it over, take a restroom break if needed, get some water. So why don't we while we're on record exchange and mark these into evidence and then break.

MR. MacDOUGALL: After we distribute this Grother's had three verified statements and another one today. We haven't heard from Mr. Packard yet and I just thought that the Packard should at this point go forward. We've certainly laid our hand out openly to everybody and we will want to be in

Page 16

a position for Mr. Grother to reply sometime in this case to what Mr. Packard is going to say. We don't know what he's going to say.

MS. ROSS: Well, if your presentation on the first issue is mainly that you're going to rely on what's in your brief or your pre-hearing submission thus far as added to by these statements and if you want to walk us through them if you think that covers the issue and then want to turn the ball over to the UP for response that would take care of issue number one in short order, I would think.

MR. MacDOUGALL: Yes, we've said what we're going to say.

MS. ROSS: Is that okay with —

MR. LOOMIS: Yes, that's fine.

MR. MacDOUGALL: Well, let the record show I'm handing out a verified statement of Tom Moore, who's the Union Pacific local chairman at Tucson. It consists of five pages dated September 14th

Page 17

and I have a reply verified statement of John D. Grother consisting of 15 pages dated October 9th.

MS. ROSS: And these will be as exhibits. I have to keep track of these. GH27 and 28.

MR. MacDOUGALL: Which is which?

MS. ROSS: The first statement is

Tom Moore and then the reply from Mr. Grother would be GH28.

(Exhibits Nos. GH27-GH28 were marked for identification.)

MS. ROSS: Let's go off record and take about 15 minutes to look this over.

(Recess)

MS. ROSS: We're back on the record. It is 11:00 a.m.

MR. MacDOUGALL: We've identified the two, GH27 and 28. I'd like to first move the admission of exhibit GH27.

MS. ROSS: That's entered. GH27 is a verified statement of Tom Moore.

Page 18

(Exhibit No. GH27 was received in evidence.)

MR. MacDOUGALL: And at this time I won't move exhibit GH28 until after Mr. Grother's finished. I'd like to call Mr. John H. Grother.

MR. GROTHER: I'd make one correction to this document. It's dated September 14th. It's the reply submission. It's the question and the correction is to my verified statement under job classification.

MS. ROSS: Let me get with you here.

MR. GROTHER: It's on page three of the verified statement, job classification, all in the first paragraph. The word "Tucson" should be "El Paso."

MS. ROSS: What line are you?

MR. GROTHER: It would be line about 12 or so into the first paragraph on page 3 of the verified statement for job

Page 19

classification, the first paragraph.

MR. LOOMIS: So that would read McDowell (?) based at El Paso?

MR. GROTHER: Right, that's how it should it read instead of Tucson. And then continued on that same document over to page —

MR. MacDOUGALL: I have a question. On page 6 —

MR. GROTHER: Yes, on page 6.

MR. MacDOUGALL: I notice Mr. Packard's here and his title is DTO and I don't see DTO on page 6. You talk about positions in the UP organization. Can you explain what a DTO is and what changes have been made since 1997?

MR. GROTHER: Okay, when I wrote this document, this verified statement, it was in the context of what was happening in Tucson in 1997. In Tucson in 1997 there was no DTO. There should have been. There wasn't. There was a title that UP had at its

Page 20

disposal and decided not to use for whatever reason. At any rate I was made Senior MTO, which is a rung below that. Mr. Packard can tell you he's a DTO. So in reality in today's organization chart at Tucson there is a DTO, DTO James Farmer, and he has a senior MTO that reports to him.

So that would be one rung less actually than what this displays because there should have a DTO at Tucson because that's where — on almost every Union Pacific terminal there's a DTO in charge.

MS. ROSS: So he would come under the DTO?

MR. GROTHER: Right, he would be right under the DTO and then under that would be the senior DTO.

MR. MacDOUGALL: So then just to finish this, in other words Mr. Packard has gone down several levels since '97?

MR. GROTHER: At the time Mr. Packard and I were together there for

Page 21

four months at Tucson. Mr. Packard was a service unit superintendent at Tucson shown in the middle of the page. My understanding now according to the system is that he's the DTO somewhere in the Omaha area. I don't know too much about what he's doing there but that's what it reads in the system, which is the locator system on the UP. He's been demoted a couple pegs down since he left. Like the advice he gave me when I left, you can't be demoted again.

MR. MacDOUGALL: Mr. Grother, have you prepared Exhibit GH28.

MR. GROTHER: Yes, I have.

MR. MacDOUGALL: True and correct to the best of your knowledge, you believe?

MR. GROTHER: Yes, it is.

MR. MacDOUGALL: Mr. Grother is available for examination on any of his verified statements, anything you want to ask him.

MS. ROSS: And GH28 is moved into

Page 22

evidence?

MR. MacDOUGALL: Yes. Well, after the question we'll move it in.

MS. ROSS: After the question.

MR. MacDOUGALL: Unless there's some objection.

MR. GROTHER: GH28 is an attempt to the carrier's submission and respond to issues which are misquoted or nonfactual. That's what it represents.

MR. LOOMIS: Union Pacific's position is that it's unreasonable to expect us to absorb this document at the hearing and make a response. We will make a response to this document at post-hearing brief.

MS. ROSS: I believe that's reasonable.

MR. MacDOUGALL: No, we object to that.

MS. ROSS: You object?

MR. MacDOUGALL: We'll have him go through it questions and answer. I

Page 23

understand from your ruling that Mr. Grother could give supplemental testimony today. This is a supplemental testimony. We thought we made it easier for the other side to put it in writing so they could look at it and not have to go through the questions and answers thing and go through each of these 30 things, do it that way with a court reporter. I think I'm facilitating the process by doing this.

MS. ROSS: So you could like Mr. Grother to go through this?

MR. MacDOUGALL: No, if you're going to say that this allows the carrier 40 days from now or whatever it is to answer that then in view of the fact that Mr. Grother is here to give further testimony we'll just do it orally. We're doing it now in lieu of oral to make it easier for counsel and everybody to look at what he's going to say if we put him on the witness stand. That's all. We're helping the other side.

Page 24

actually, doing it.

MR. LOOMIS: I believe that our arbitration agreement allows me the ability to file a brief after the hearing whether Mr. MacDougall likes it or not.

MS. ROSS: It's my ruling that if Union Pacific opts to accept this and review it after the hearing, which we're all doing to do is review anything that's submitted today, it could be advantageous for Union Pacific to make arguments today on this or comments. If Union Pacific chooses not to Union Pacific has the right to respond in their post-hearing brief and I'll sort out —

MR. MacDOUGALL: Then let's have Mr. Grother do it orally. I mean, you came here for a hearing or not.

MS. ROSS: If Mr. Grother would like to walk us through this or read it into the record that's his prerogative. He

may (21) testify to this.

(22) **MR. MacDOUGALL:** I don't see Union

Page 25

(1) Pacific getting Mr. Packard to answer this a (2) month from now. He's here today.

(3) **MS. ROSS:** Well, when it's Union (4) Pacific's turn to respond Union Pacific can (5) provide its witnesses' testimony consistent (6) with having Union Pacific's going to unfold (7) its case today.

(8) **MR. MacDOUGALL:** You're ruling that (9) they can answer this a month from now? Let's (10) have Mr. Grother go through each one of these (11) things now to try to simplify matters.

(12) Mr. Grother, looking at the exhibit (13) GH28, paragraph numbered 1, the statement is (14) that Union Pacific is represented by its (15) general director of labor relations, W.E. (16) Loomis. What's your response to that?

(17) **MR. GROTHER:** It's my understanding (18) that the title of Mr. Loomis is " General (19) Director-Employee Relations Planning" as (20) noted on Employee Exhibit E5 page 3.

(21) **MR. MacDOUGALL:** On the statement (22) of the facts it says John E. Grother, number

Page 26

(1) 2, has been employed by Southern Pacific for (2) 28 years prior to the merger, having served (3) in a variety of management positions. What's (4) your response to that?

(5) **MR. GROTHER:** I was a Southern (6) Pacific SP employee for 27 years prior to the (7) merger. The merger, of course, took place in (8) '96. The term "management positions" is (9) incorrect. For example, I was a trainee at (10) one point among other positions. For my job (11) history see Employee Exhibit E3 paragraph 7 (12) or UP Exhibit 2 page 16.

(13) **MR. MacDOUGALL:** Turning to the (14) third thing, there's a statement and it says (15) Ahart found no evidence Mr. Grother's (16) demotion was a result of a merger (17) transaction. What's your response to that?

(18) **MR. GROTHER:** no finding (19) concerning evidence the Ahart correspondence (20) speaks for itself, Employee Exhibit E4 and UP (21) Exhibits 5, 6, and 11.

(22) **MR. MacDOUGALL:** Paragraph 4 is a

Page 27

(1) statement Mr. Grother also engaged in an (2) exchange of correspondence with Butch (3) Ethington, the Union Pacific ombudsman, (4) during this same period of time in order to (5) present a complete record. That (6) correspondence is attached as Union Pacific (7) 42. What's your response to that?

(8) **MR. GROTHER:** The Union Pacific (9) Exhibit 42 is not a complete record of (10) correspondence with the ombudsman but it is (11) only a highly selective portion of the (12) ombudsman's letters to me. UP Exhibit 42 (13) consists of only three letter, all issued in (14) late 2003 after this arbitration was invoked. (15) None of my correspondence to the ombudsman is (16) included in the UP Exhibit 42.

(17) **MR. MacDOUGALL:** Turning to (18) paragraph 5, the final sentence, at the time (19) of Mr. Grother's self-described demotion on (20) July 1, 1997, he was senior manager of (21) terminal operations SMTO at Tucson, Arizona. (22) What's your response to that?

Page 28

(1) **MR. GROTHER:** My actual (2) self-described terminology is merger (3) transaction-related demotion and it's set (4) forth at the outset of my May 12, 2003, (5) letter to Mr. James V. Dolan invoking (6) arbitration or a settlement process. (7) Employee Exhibit E2 on paragraph 1, UP (8) Exhibit 2 page 1.

(9) **MR. MacDOUGALL:** Paragraph 6, "A (10) senior manager of terminal operations is the (11) top transportation (operating) position in (12) the terminal. In other words the SMTO is the (13) boss of a terminal." What's your response to (14) that?

(15) **MR. GROTHER:** Mr. Loomis is not (16) correct in describing UP operating positions (17) whether top or boss. The top position at UP (18) terminals is regularly a director of terminal (19) operations, DTO or higher. At Tucson, El (20) Paso, San Antonio, and Settegast Houston a (21) DTO is the top. At Avondale New Orleans the (22) Director of Transportation Services is the

Page 29

(1) top terminal position. Based on UP (2) database the SMTO works for the DTO, DTS, or (3) Superintendent of Transportation Services (4) depending on how the service unit or division (5) is organized. My duty as senior MTO, SRMTO, (6) are set forth in my job classification (7) pages 225. I was not the top man or the boss (8) of the Tucson terminal.

(9) **MR. MacDOUGALL:** Paragraph 7, the (10) job description for that position lists the (11) basic purpose of the position is to " ensure (12) the quality of the transportation product of (13) the terminal meets or exceeds the standards (14) set by the business objectives and customer (15) expectations. The primary responsibilities (16) of the position are," listing nine items. (17) What's your response to that?

(18) **MR. GROTHER:** The above job (19) description except for the safety process (20) ends is taken from the August 1999 job (21) application description, Employee Exhibit E2 (22) 33B or UP Exhibit 2 page 108. This was not

Page 30

(1) in affect in April of 1997. I was not given (2) a 1997 job description. Indeed Mr. Loomis (3) asserts that following the merger my job did (4) not change. UP's submission, page 2, final (5) paragraph. In the hectic days of the (6) breakdown in operations following the merger (7) many of the UP personnel processes were not (8) in place, including a new job description for (9) myself. For the real world on UP in early (10) 1997 see my and job (11) classification.

(12) **MR. MacDOUGALL:** Paragraph 8 says (13) that, "In Mr. Grother's own words he was 'in (14) command' of the terminal at Tucson." What's (15) your response to that?

(16) **MR. GROTHER:** This is a misquote. (17) UP Exhibit 2 page 42, Employee Exhibit E2 (18) page 42. The reference to compared to others (19) who were in command roles does not imply that (20) Grother was in command at Tucson. It is the (21) others that were in command.

(22) **MR. MacDOUGALL:** On paragraph 9,

Page 31

(1) "He was the boss of a terminal where (2) approximately 85 employees covered by a (3) collective bargaining agreement worked under (4) his command. Mr. Grother was responsible for (5) approximately 13 yard assignments and four (6) road jobs (local)." What's your response to (7) that?

(8) **MR. GROTHER:** The DTO position was (9) the boss of the terminal. In the absence of (10) a DTO, which was the situation at Tucson in (11) early 1997, Superintendent Packard, STS, and (12) Assistant Superintendent McDowell, DTS, were (13) in charge, boss. They performed the boss (14) role over the 85 employees and yard (15) assignments. See my job classification.

(16) **MR. MacDOUGALL:** Paragraph 10, " The (17) terminal he commanded had an annual budget of (18) approximately $2.5 million per year and (19) processes approximately 700 cars per day." (20) What's your response to that?

(21) **MR. GROTHER:** As for my command see (22) my response to number 8. I had no knowledge

Page 32

(1) of any budget for Tucson, $2.5 million or 10 (2) million. The UP budget for Tucson was not (3) made known to me or

to the other three MYOs. [4] We were told the budget was in the process of [5] being finalized; therefore, as an example all [6] overtime had to be authorized by either [7] McDowell or Packard. Overtime was a promise [8] of McDowell or Packard as was the use of [9] additional switch engines.

[10] **MR. MacDOUGALL:** Paragraph 11, [11] approximately four subordinate officers [12] (MTOs) and MYOs reported to Mr. Grother and [13] he reported directly to the service unit [14] superintendent. What's your response to [15] that?

[16] **MR. GROTHER:** The term [17] " approximately" is incorrect. The three [18] nonagreement operating personnel in 1997, all [19] MYOs, are named by Employee Exhibit E2, [20] brackets E9 job classification [21] attachment 1 or UP Exhibit 2 page 63. My [22] relationships with these MYOs were set forth

Page 33

[1] in my job classification pages 2 through [2] 5 which was in a relief role. The three MYOs [3] were not my subordinate officers. I reported [4] directly to Packard and McDowell. I reported [5] to both McDowell and to Packard and to [6] personnel at headquarters who issued [7] instructions. At no time did Packard state [8] or act as or my direct supervisor.

[9] **MR. MacDOUGALL:** Paragraph 12, "As [10] senior manager of terminal operations, either [11] he or one of his subordinate officers, would [12] make hire decisions on candidates for [13] employment who were being interviewed by the [14] human resources department. In short the [15] senior manager of terminal operations has the [16] authority to hire and fire." What's your [17] response to that?

[18] **MR. GROTHER:** For my "subordinate [19] officers" see response to number 11. As for [20] hiring and firing at no time did I or any of [21] the MYOs make hiring decisions between [22] September '96 and June '97 or when the merged

Page 34

[1] companies were in a hiring freeze as it was [2] assumed the UP hub system would require fewer [3] employees I never had the authority to fire [4] anyone. Packard had the authority to hire [5] and to fire. See also my job [6] classification at pages 4 through 5.

[7] **MR. MacDOUGALL:** Paragraph 13, "In [8] the event of a disciplinary investigation [9] ( ) involving an employee at the Tucson [10] terminal, the senior manager of terminal [11] operations would review the transcript and [12] recommend the appropriate level of [13] discipline, including dismissal were [14] appropriate, to the service unit [15] superintendent." What's your response to [16] that?

[17] **MR. GROTHER:** As senior MTO I never [18] reviewed a transcript or recommended [19] discipline to Packard. Although one of the [20] UP processes which was being introduced at [21] Tucson in early 1997 was the UP upgrade [22] discipline system which was used by

Page 35

[1] Superintendent Packard to determine the [2] appropriate level of discipline based on [3] repeat offenses and other standards the [4] upgrade system did not require any input for [5] a low level nonagreement employee as it would [6] provide a matrix to determine discipline.

[7] **MR. MacDOUGALL:** Paragraph 14, [8] moved approximately 700 cars per day. The [9] term "approximately" is used repetitively in [10] this section because the timing of [11] Mr. Grother's claim places Union Pacific in [12] the position of estimating what was in effect [13] at Tucson more than six years ago. What's [14] your response to that?

[15] **MR. GROTHER:** My sample indication [16] average of 618 cars at the beginning of the [17] day. See my causality 2 through 2 and [18] attachment 2. I have repeatedly offered the [19] data consisting of 20 boxes to UP without any [20] request for examination concerning my sample [21] which in any event approximates the UP's 700- [22] car estimate.

Page 36

[1] **MR. MacDOUGALL:** Paragraph 15, [2] " Terminal superintendents (a Southern Pacific [3] title) or senior managers of terminal [4] operations (a Union Pacific title) had never [5] been covered by collective bargaining [6] agreement on either Southern Pacific or Union [7] Pacific. Mr. Grother acknowledges this in [8] his July 28, 2000, letter to Marilyn Ahart. [9] Union Pacific Exhibit 8, when he says after [10] retirement he plans to 'reactivate' the [11] unionization of managers starting with UPRR." [12] What's your response to that?

[13] **MR. GROTHER:** Our letter did not [14] acknowledge whether or not certain personnel [15] had ever been covered by a CBA on either SP [16] or UP and I do not have complete information [17] on this my use of the phrase "reactivate [18] the unionization of managers" did not have [19] specific reference to any particular craft or [20] class of employees. My July 28, 2003, letter [21] to Ms. Ahart was intended for settlement [22] purposes as suggested in the opening

Page 37

[1] sentence, UP Exhibit 8 page 1.

[2] **MR. MacDOUGALL:** Paragraph 16, [3] " This board should evaluate Mr. Grother's [4] skills to determine if they are transferable. [5] The best source of that information is [6] Mr. Grother's own assessment of his skills. [7] In his May 12, 2003, letter to Mr. Dolan, [8] Mr. Grother touts his own education, [9] training, and skills as follows, UP Exhibit [10] 2. Clearly, Mr. Grother's level of [11] education, training, and skills is readily [12] transferable to industries other than the [13] railroad. Union Pacific asserts that this is [14] another reason why Mr. Grother should be [15] considered to be an official and thus not [16] covered by New York Dock." What do you say [17] to that?

[18] **MR. GROTHER:** The referenced [19] quotation from my May 12, 2003, letter to [20] Mr. Dolan did not address any skills that I [21] may have for employment outside the railroad [22] industry. At my age in 1997, then 51, and

Page 38

[1] now 58 years, I am not considered suitable [2] for comparable employment in another [3] industry. Moreover, UP has found my skills [4] not transferable to other railroad work at UP [5] even on a lateral level despite numerous job [6] applications partially shown on UP Exhibit 2 [7] pages 103 and 108 and Employee Exhibit E2. I [8] have not progressed beyond one telephone [9] interview. The best source of [10] transferability is my actual experience in [11] attempting job transfer. See also my [12] job classification pages 5 through 6.

[13] The following statement, "UP, Union [14] Pacific, asserts this is another reason why [15] Mr. Grother should be considered an [16] official," is without foundation for whatever [17] UP person considers me an official either at [18] Tucson or Houston is not identified. There [19] is, of course, a distinction between officer [20] and official.

[21] **MR. MacDOUGALL:** Paragraph 17, "A [22] great deal of Mr. Grother's May 12, 2003,

Page 39

[1] letter is devoted to his portrayal of himself [2] as the victim not of the merger but of what [3] he considers to have been an ill-advised and [4] a very thought out plan implemented by his [5] superiors. What's your response to that?

[6] **MR. GROTHER:** Contrary to the above [7] statement, the UP-SP merger with a subsequent [8] action taken in April 1997 was a cause of my [9] adverse effect on July 1, 1997. Reduction of [10] work in Phoenix and the dramatic increase in [11] freight traffic for Tucson were a part of the [12] merger plan or replanned ex-

periment as filed [13] with the Service Transportation Board. This [14] plan was implemented by persons superior to [15] me but its basis is in the UP-SP merger. See [16] my causality.

[17] **MR. MacDOUGALL:** Paragraph 18, [18] "Note carefully, however, Mr. Grother never [19] clearly explains the link between the [20] 'consolidation experiment' and his demotion. [21] What's your response to that?

[22] **MR. GROTHER:** Contrary to the above

Page 40

[1] statement I demonstrated the causal nexus. [2] See my causality, Employee Exhibit E2 [3] page 3 paragraph 3, page 5 paragraph 4, page [4] 6 paragraph 4, page 7 paragraph 2, page 10 [5] paragraph 2 and 4, page 11 the final [6] paragraph, page 12 paragraph 2 and final [7] paragraph, and page 14 paragraph 2.

[8] The consolidation of Phoenix [9] traffic into Tucson had never been tried [10] prior to the UP-SP merger attempt. The June [11] 1997 service failure described by UP [12] President Davis would [13] have occurred and [13] his immediate action of displacing me and [14] ending the merger experiment would not have [15] taken place apart from the merger. Employee [16] Exhibit E2(11), UP Exhibit 2 page 68.

[17] Moreover, I am advised the burden [18] is on UP to prove that factors other than the [19] merger-related transaction affected the [20] employee.

[21] **MR. MacDOUGALL:** Paragraph 19, [22] "Union Pacific assets Mr. Grother was removed

Page 41

[1] from his position in Tucson because of his [2] job performance and not because of the [3] merger. Union Pacific states the reason [4] Mr. Grother was transferred to a position of [5] less responsibility, and his salary adjusted [6] accordingly, was because of his superior's [7] assessment of his overall job performance. [8] During the spring and early summer of 1997 [9] Mr. Grother was observed by mangers who had [10] not previously had the opportunity to observe [11] his performance. The reason for [12] Mr. Grother's demotion was that after a few [13] months of such observation, his new bosses [14] concluded he was not the person to be 'in [15] command' at Tucson." What's your response to [16] that?

[17] **MR. GROTHER:** The terms "Union [18] Pacific asserts" and "Union Pacific states" [19] in the above first two sentences are [20] anonymous unless it is the opinion of the [21] author, Mr. Loomis. My appeal to UP [22] President Davis stated, "I had no indication

Page 42

[1] of personal unsatisfactory performance before [2] hand although there was talk that the Phoenix [3] re-plan was not working as others designed." [4] Employee Exhibit E2(10), UP Exhibit E2 pages [5] 64 to 67.

[6] President Davis did not deny my [7] statement concerning unsatisfactory [8] performance. Instead President Davis [9] corroborated the direct nexus of my [10] displacement with the June service failure [11] created by the Phoenix re-plan. Employee [12] Exhibit E2(11), UP Exhibit page 62.

[13] And on UP there's a direct [14] supervisor's accountability to document [15] overall performance with an interim [16] performance development review and a [17] development action plan yet no one at UP did [18] these documents in my situation. The balance [19] of the above statement taken from page 31, [20] first paragraph, relate to my superiors at [21] Tucson, managers visiting Tucson, and new [22] bosses. My superiors at Tucson were McDowell

Page 43

[1] and Packard. Neither of these superiors [2] orally or in writing advised me of 1997 [3] unsatisfactory personal performance.

[4] The purported observations by [5] managers who had not previously observed my [6] performance is another anonymous statement [7] which comes [8] to me first through Mr. Loomis in [9] his submission. None of the managers who [9] visited Tucson told me orally or in writing [10] that I was an satisfactory performer. Indeed [11] I was selected as senior MTO on April 16, [12] 1997, by Packard.

[13] The term "new bosses" does not [14] provide identification. Apparently the [15] submission writer, Richard Loomis, is [16] referring to UP personnel rather than SP [17] personnel. The statement that these new [18] bosses did not want me "in command" may be [19] simply the submission writer's opinion. I [20] was not in command of Tucson. Messrs [21] McDowell and Packard were in command of [22] Tucson.

Page 44

[1] **MR. MacDOUGALL:** In paragraph 20, [2] "Union Pacific does not believe that [3] 'consolidated experiment' was even [4] merger-related." What's your response to [5] that?

[6] **MR. GROTHER:** The basis for "Union [7] Pacific" is anonymous but the statement that [8] the merger had not be implemented for [9] operations in Tucson in the spring of 1997 [10] and the description at pages 27 through 29 [11] appears based on the writer's experience in [12] negotiating merger implementing agreements [13] with organized operating crafts. Contrary to [14] the UP submission writer UP managers were in [15] charge at Tucson early 1997 and merger- [16] related plans were being carried out. See my [17] causality and employee submission pages [18] 8 through 14.

[19] To be sure, organized operating [20] employees may continue under their pre- [21] merger agreements until implemented [22] agreements are placed into effect. This does

Page 45

[1] not mean that nonagreement employee changes [2] must await changes in agreement employee [3] working conditions.

[4] **MR. MacDOUGALL:** Paragraph 21, "In [5] this instance case involving Mr. Grother, the [6] transaction is the UP-SP merger. Events [7] which could have taken place even if a merger [8] had not occurred do not trigger protection, [9] even if the result is an employee being [10] placed in a worse position. Separate and [11] apart from the timing of the merger see [12] "experiment" to consolidate switching [13] formerly done at Tucson could have been done [14] by SP prior to the merger. It was not [15] merger-dependent." What's your response to [16] that?

[17] **MR. GROTHER:** Well, the UP SP [18] merger as a transaction so was the action [19] taken pursuant to the merger resulting in [20] Grother being placed in a worse position on [21] July 1, 1997 also a " transaction." Employee [22] Exhibit E2 page 1 and UP submission page 26.

Page 46

[1] At no time prior to the UP-SP merger would SP [2] have attempted to consolidate all switching [3] from Phoenix to Tucson's 1 percent grade [4] yard. Of considerable importance is the fact [5] that the UP-SP merger gave UP the right to [6] make immediate operational decisions to [7] benefit the UP system which would not have [8] been made by SP standing alone. Such [9] decisions would have been economically [10] adverse to a separate SP system. Moreover, [11] it was the UP traffic diverted to Tucson [12] along with other revisions in traffic which [13] permitted changes in the operation of the SP [14] facilities. These changes would not have [15] been made without the merger.

[16] **MR. MacDOUGALL:** Paragraph 22, " UP [17] states that if Mr. Grother had been removed [18] from his job as part of a merger-related [19] reduction or consolidation of officials, [20] there would

have been no need to appoint a [21] replacement." What's your response to that?

[22] **MR. GROTHER:** The identity of the

Page 47

[1] "UP states" is unknown but it is presumed the [2] writer of UP submission. The fact is that UP [3] advised in its merger application to the STB [4] there would many changes in nonagreement [5] positions at Tucson. With jobs transferred [6] from other locations to Tucson and jobs [7] transferred from Tucson to other locations. [8] There are obviously many reasons for job [9] transfers which may embrace replacements of [10] the very jobs being transferred. Employee [11] Exhibit E19.

[12] **MR. MacDOUGALL:** Paragraph 23, "A [13] manager who suffers a decrease in salary [14] because of reassignment based on job [15] performance cannot be considered as having [16] being placed in a worse position because of [17] the merger." What's your response to that?

[18] **MR. GROTHER:** The reasoning lacks [19] logic. A merger with shifts in traffic and [20] in operations can create different [21] requirements for "job performance." In short [22] in a reorganization stemming from a merger

Page 48

[1] the nature of the job might change or the [2] change in required "performance standards" [3] And with different criteria for evaluation of [4] "job performance." See my causality [5] page 1 and 4 through 5. Thus, merger- [6] related job performance can be a cause for [7] displacement to a worse position. In any [8] event I was not charged with poor [9] performance. Ms. Ahart's July 18, 2003, [10] letter denying coverage of New York Dock [11] conditions mentions performance standards," [12] not "job performance." Employee Exhibit E4 [13] and UP Exhibit 5 page 1.

[14] **MR. MacDOUGALL:** Paragraph 24. [15] Mr. Grother will argue that "but for" the [16] UP-SP merger, the situation which led to his [17] demotion would never had occurred. In [18] summary, it really does not make a difference [19] whether this arbitration committee determines [20] the reason put forth by Grother (the [21] consolidation "experiment") or the reason put [22] forth for the Union Pacific (poor job

Page 49

[1] performance) was the cause of his demotion. [2] Either event could have taken place prior to [3] the merger; therefore, Mr. Grother's [4] reassignment and reduction of salary did not [5] come as a result of the merger. What's your [6] response to that?

[7] **MR. GROTHER:** See my responses to [8] 19 and 21 concerning merger-related [9] operational changes. Of course, as a [10] nonagreement person I am always subject to [11] reassignment or discharge but such does not [12] avoid the fact that the reassignment or [13] discharge is merger-related. Under the [14] theory apparently Loomis advanced above a [15] nonagreement always subject to reassignment [16] or discharge would never qualify for New York [17] Dock which would be absurd.

[18] Finally I note that this a first [19] occasion in this submission where Union [20] Pacific by unidentified person has claimed in [21] writing that my July 1997 displacement was [22] due to "poor job performance." There is no

Page 50

[1] record support for such claim apart from [2] hearsay January 14, 2003, by the ombudsman [3] but subsequently was modified on November 10, [4] 2003. Employee Exhibit E2 page 26, UP [5] Exhibit 2 pages 26, employee submission [6] causality attachment 3.

[7] **MR. MacDOUGALL:** Paragraph 25, [8] " Mr. Grother's demotion was effective July 1, [9] 1997. He first notified Union Pacific of his [10] position that a dispute existed on the New [11] York Dock in a letter dated May 12, 2003. [12] What's your response to that?

[13] **MR. GROTHER:** My first written [14] notification that a dispute exists was on [15] July 15, 1997, not May 12, 2003. See my [16] laches at page 2, Employee Exhibit E2(E10). [17] This was acknowledged September 4, 1997, as [18] Employee Exhibit E2-E11. To be sure, my [19] dispute was not labeled New York Dock but the [20] label is unimportant. UP was well aware a [21] dispute existed over my claim or over other [22] claims arose out of my displacement under

Page 51

[1] other federal provisions well before May 12, [2] 2003.

[3] **MR. MacDOUGALL:** Paragraph 26. [4] " Union Pacific's position is that Mr. Grother [5] slept on his rights to the detriment of Union [6] Pacific being able to defend itself because [7] some of the alleged villains in this claim [8] have left the company. In addition records [9] pertaining to the switching experiment no [10] longer exist and the personal recollection of [11] people with the railroad have grown dim. His [12] reasons are sprinkled through his May 12, [13] 2003, letter to Mr. Dolan." What's your [14] response to that?

[15] **MR. GROTHER:** The Union Pacific is [16] quite able to defend itself. Messrs McDowell [17] and Packard, the latter being a service unit [18] superintendent, are still with the company [19] and Packard is an announced witness. UP [20] submission page 41.

[21] The records involving the switching [22] experiment have been preserved and are

Page 52

[1] available per my response number 14.

[2] **MR. MacDOUGALL:** Paragraph 27, the [3] numbered paragraphs which follow list [4] Mr. Grother's reasons for delay as summarized [5] by Union Pacific. What's your response to [6] that?

[7] **MR. GROTHER:** The UP submission [8] grossly misstates my written statement and [9] much of UP's "summary" is also speculation. [10] The reader is directed to my own written [11] statement, Employee Exhibit E2 and Employee [12] Submission laches.

[13] **MR. MacDOUGALL:** Paragraph 28, " One [14] of the reasons Mr. Grother cites, his loss of [15] his medical insurance. Mr. Grother's fear [16] that he might loss COBRA coverage could not [17] have arisen." What's your answer to that?

[18] **MR. GROTHER:** UP does not dispute [19] my fears concerning medical coverage but [20] merely asserts I would not be as adversely [21] affected as I understand my coverage would [22] have been. I stand by my reasoning. I did

Page 53

[1] not say I would retire at age 55 but only [2] that age I could "more safely file for [3] arbitration in as much as I would be eligible [4] to pay a reduced amount for medical insurance [5] for my wife." Without such minimal assurance [6] not guaranteed by UP policy one would pay [7] astronomical COBRA insurance payments for 18 [8] months and then be placed in a high-risk [9] pool. These high-risk insurance pools would [10] cost up to 10 times more than my severely [11] reduced UP pension if taken at age 55.

[12] **MR. MacDOUGALL:** Paragraph 29, [13] "However, a person familiar with the [14] circumstances involved with Mr. Grother at [15] Tucson in mid-1997 is still employed by Union [16] Pacific. That person is Jim Packard, who was [17] the Tucson service unit's superintendent, and [18] Mr. Grother's immediate supervisor." What's [19] your response to that?

[20] **MR. GROTHER:** My immediate [21] supervisor to whom I reported was H.L. [22] McDowell. See my pages 2-3.

Page 54

[1] **MR. MacDOUGALL:** Paragraph 30, "If [2] this board determines Mr. Grother was covered [3] by New York Dock at the time of his salary [4] reduction and relocation

hen Union Pacific should be able to recover the excess compensation and reimbursement paid to Mr. Grother when it comes time to consider the measure of the compensation due Grother phase of this case." What's your response to that?

MR. GROTHER: I disagree with the UP statement of cause to relocation claimed at pages 42 to 43 or whether any offset of New York Dock benefits is proper or whether this committee should not at this time make any finding as to whether UP's claim should be sustained or whether any offset should be allowed. Indeed it is believed improper for any mention of the subject at this time in light of the procedural agreement covered in this arbitration. Employee Exhibit E16 paragraph E and F.

Page 55

MR. MacDOUGALL: Thank you.

MS. ROSS: You're welcome.

MR. MacDOUGALL: I'd like to move admission of GH28.

MS. ROSS: So entered.

(Exhibit No. GH28 was received in evidence.)

MS. ROSS: Does that conclude your presentation on the first issue?

MR. MacDOUGALL: Yes, that's our direct —

MS. ROSS: Direct presentation?

MR. MacDOUGALL: Direct presentation, right. We may have some hidden things depending upon circumstances.

MS. ROSS: I guess we're in cross mode. Would you like a couple minutes?

MR. LOOMIS: No.

MS. ROSS: No? All right, we'll move into I guess for lack of better terminology cross-examination.

MR. LOOMIS: Am I to understand as

Page 56

you set out the three-step process of causality that Grother was going to argue and then later whether he's an employee and whether it's laches that we have heard Mr. Grother's primary argument regarding causality?

MS. ROSS: Is that the case or is this evidence?

MR. MacDOUGALL: It's evidence on all three issues.

MS. ROSS: This is on all three issues?

MS. MacDOUGALL: Yes.

MS. ROSS: Are you resting on all three and are we now in response with re-direct?

MR. MacDOUGALL: Well, it depends. If they're going to separate three things we won't rest on anything other than the first issue because who knows what's going to come. You've trifurcated this thing so we'll wait.

MS. ROSS: Well, the trifurcation

Page 57

was an attempt to keep this manageable. By presenting this I view this as a measured and deliberate response to the initial submission. If you would like this to constitute your presentation with respect to the three issues and would like the Union Pacific to respond to all three with then your opportunity to re-respond I'm willing to revisit my trifurcation proposal since I think we have some order. But that's up to the other two members.

MR. LOOMIS: My understanding was, and we had some initial discussion, I made the point that I thought they ought to go first on the employee but I later came back and I said I could live with your proposal. I understood your proposal and perhaps I misunderstood it that we were going to consider causality, that the Grother portion of this committee would put on their argument about causality, then Union Pacific would put its argument about causality, then they would

Page 58

have the right to rebut about causality and we could rebut about this until everybody said we've exhausted on causality; now let's move onto employee. I don't see now how we can say we've covered all three because my understanding was we're lead dog on employee and laches. We go first on employee and laches.

So my question is merely this. With regard to causality is what we heard here, this responsive reading outside of the Presbyterian church, if you will, the Grother side's primary argument completed with regard to causality?

MS. ROSS: I think we can still work in the framework of a three-step process here. Have you made your presentation on causality? And we'll expect Union Pacific's response on causality. Then we'll go back and ask you again if you would like to revisit any of this on the issue of employee and then we can respond that way. And we'll

Page 59

have them, UP, proceed on the laches.

MR. MacDOUGALL: So now the issue is —

MS. ROSS: If you —

MR. MacDOUGALL: Causality, yes.

MS. ROSS: So go ahead, Union Pacific, and conduct your cross-examination on the causality.

MR. LOOMIS: Well, as a matter of point I don't view this as a cross-examination. I view this as Union Pacific putting on its primary argument with regard to causality because we come after then and they said they've finished their primary argument.

MS. ROSS: We'll characterize it as UP's primary argument subject to response by —

MR. LOOMIS: I have no questions at this time to ask Mr. Grother because, as said earlier, I need time to study this document before I can respond to it. So going ahead

Page 60

with the Union Pacific's or you may hear me slip today and refer to the carrier which I'm used to in labor arbitration. I have one objection. I want to put into the record here and this would have been my initial objection here. It's not that onerous but I just want to get it on the record.

This case deals with the interpretation, application, or enforcement of the New York Dock conditions to John E. Grother in connection with his salary reduction which occurred on or about July 1, 1997. The parties have separately identified the questions/issues in this case, (1) whether Grother was a "employee" as contemplated by New York Dock, (2) whether Grother was adversely affected as a result of the UP/SP merger, and (3) whether Grother's claim is barred by the doctrine of laches. Union Pacific presents them as two questions (having combined the first and the second into one question). Bob Grother presents

Page 61

them as three separate issues.

However presented, the issue, question, of whether Grother was an "employee" for purposes of the New York Dock conditions on the date of his salary reduction is a key part of this case. In the dictionary definition sense of the word "employee" Mr. Grother was and is an employee. In that same sense Union Pacific's President Jim Young or UP's Vice Present of Labor Relations John Marchant are employees.

In the dictionary sense you may hear me refer today to Mr. Grother as an employee of Union Pacific; however, in the sense of being an employee for

purposes of [16] New York Dock Union Pacific's position is [17] that neither Mr. Young nor Mr. Marchant are [18] employees and neither was Mr. Grother at the [19] time of his salary reduction.

[20] Union Pacific notes that Grother's [21] written submission is entitled "Employee's [22] Submission" and that instead of referring

Page 62

[1] Mr. Grother by name in that submission, [2] Mr. Grother's attorney repeatedly refers to [3] him as "employee." Union Pacific wishes to [4] go on record as objecting to such [5] characterization of Grother as an employee. [6] This is being done so that Grother may not [7] contend now or in the future Union Pacific [8] took no exception to such characterization [9] and thus acquiesced to Grother's position he [10] was an employee for purposes of New York Dock [11] on or about July 1, 1997.

[12] **MR. MacDOUGALL:** That's your [13] argument on causality?

[14] **MR. LOOMIS:** That's a housekeeping [15] argument at the beginning, just wanted to [16] make it clear. If you want me to read it [17] again I can. If you want to read it on the [18] record you can. I don't want anybody to [19] contend because we did not object to your [20] characterization of Mr. Grother as an [21] employee that we somehow acquiesced that.

[22] I note with some interest where you

Page 63

[1] made a response to the Surface Transportation [2] Board earlier in the exchange of petitions we [3] had there. You pointed out that we hadn't [4] objected to your letter objecting to him [5] characterized as a management employee so in [6] case we get into an objecting mood later I [7] just wanted to put that on the record.

[8] We're going to causality. Much in [9] Mr. Grother's initial May 12, 2003, letter to [10] Mr. Dolan and in his written submission talks [11] about the conditions of the railroad in the [12] spring and early summer of 1997 in the [13] vicinity of Tucson. Mr. Grother in his [14] submission points out the "UP/SP merger, [15] emergency crisis, and the STB oversight." [16] We're not here to deny, and this is possibly [17] an understatement, that the UP/SP merger did [18] not go as smooth as we had anticipated. We [19] had extreme problems implementing the merger. [20] Various reason for that. I just wanted to [21] speak to that because a large portion of [22] Mr. Grother's early submission deals with

Page 64

[1] that. However, it's the company's, Union [2] Pacific's, the carrier's, position that those [3] problems did not result in Mr. Grother's [4] salary reduction, that it was, if you will, [5] his reaction to those problems.

[6] I was not at Tucson in the spring [7] and early summer of 1997 but I have with me [8] Mr. Ken Packard, who was the newly appointed [9] service union superintendent for the Tucson [10] service unit. And at this point I'd like to [11] allow Mr. Packard to make whatever statements [12] he cares to make. He is familiar with [13] Mr. Grother's claim and I'd like him to tell [14] us in his words how he viewed the situation [15] at Tucson with emphasis on Mr. Grother's [16] salary reduction and transfer.

[17] **MR. MacDOUGALL:** Has he been sworn [18] in?

[19] **MS. ROSS:** I'm going to swear him [20] right now. Mr. Packard, since you're about [21] to give evidence would you please raise your [22] right hand?

Page 65

[1] Whereupon, [2] KENNETH PACKARD [3] Was called as a witness and, having been [4] first duly sworn, was examined and testified [5] as follows:

[6] **MS. ROSS:** Let the record show that [7] Mr. Packard has been duly sworn.

[8] **DIRECT EXAMINATION**

[9] **THE WITNESS:** I was assigned to the [10] superintendent's position at Tucson, Arizona, [11] effective January 1, 1997. Now, prior to my [12] arrival the Union Pacific had already made an [13] adjustment in names or titles of positions. [14] The Union Pacific did not have terminal [15] superintendents, didn't have assistant train [16] masters. They just had different names for [17] their managers.

[18] So John's title was changed to [19] senior manager of terminal operations. The [20] train masters at Tucson, their titles were [21] changed to managers of yard operations. And [22] then the road foreman of engines, their

Page 66

[1] titles were changed to managers of operated [2] practices. Those were title changes. There [3] was no change in reference to salaries of [4] their positions and for the most part there [5] was no change in requirements of the [6] positions, the duties.

[7] Now, shortly after I arrived on the [8] property I was told that I had to make a [9] selection of the managers that I was going to [10] retain on the entire service unit in about a [11] 10-day time period. Now, I personally [12] requested additional time. I didn't feel [13] comfortable in doing this because the policy

[14] that we had in place was either the incumbent [15] was offered a position or the incumbent was [16] unemployed which is a pretty serious decision [17] for me to make and my time being there I [18] didn't feel was sufficient that I was [19] comfortable on this.

[20] I conferenced with the director of [21] quality, Hugh Lawson. Lawson, of course, was [22] formally on the territory as assistant

Page 67

[1] superintendent at El Paso and he was familiar [2] with the people so this was kind of a joint [3] effort between him and I. Now, one thing I [4] learned from previous mergers was if you can [5] retain the same people on the position it's [6] much less disruptive. You've got big [7] challenges out there and the less shuffling [8] you do of the deck the better off you are.

[9] But I've got to tell you that at [10] that time I had reservations about John. I [11] was a little concerned. I was a little [12] nervous about it. I had discussed the [13] situation with Hugh. He also had some [14] reservations but as I refer to it we decided [15] to do the Christian thing and give everybody [16] an opportunity to work on this new [17] organization.

[18] John was senior MTO. Of course, at [19] Tucson as anywhere else, there is a hierarchy [20] in the management. There's a hierarchy. [21] Superintendent, the DQT at that time, I think [22] it was, director of quality transportation.

Page 68

[1] so on and so forth. But everybody's got [2] their individual responsibilities and I had [3] the administrative responsibility of the [4] entire service unit and it was huge. It went [5] from Yuma, Arizona, to Tucumcari, New Mexico, [6] south to Alpine, Texas, and all the way east [7] to Sweetwater, Texas. It was huge. It was [8] too big.

[9] Mr. McDowell, he had the [10] responsibility of the transportation product. [11] That was the speciality area of that [12] position. Now, the way we did some things [13] even though Hugh I had the PDRs for all of [14] the managers. When I say PDRs that's the [15] performance review. That's the rating of the [16] manager. Hugh didn't do any. I did the [17] upper level managers and then in turn John [18] would do the MYOs and so on. That's kind of [19] the way the process worked.

[20] The senior MTO is responsible for [21] the operations of the terminal. He's got [22] responsibilities with the safety,

Page 69

[1] responsibilities with budget, [2] responsibilities with the transportation [3]

product. He is the front line doer of this. [4] In reference to Phoenix at some [5] point down there — I don't recall the exact [6] date — Art Schoener, who was then Executive [7] Vice President with the Union Pacific of [8] Operations, came down and we made a trip over [9] the territory and we made a trip to Phoenix. [10] And the Phoenix yard is in downtown Phoenix [11] and it sits right at the foot of the brand [12] new stadium. It's probably not the best [13] location for a rail yard but there it is.

[14] And he looked at it and he said you [15] need to close Phoenix. You know, I can't [16] close Phoenix. Phoenix had 520 track-served [17] customers, big customers. We're talking [18] Anheuser-Busch, Ford, Toyota, Weyerhaeuser. [19] But I told him that we would take a hard look [20] at reducing our presence in Phoenix.

[21] And we had I'm not sure how many [22] meetings in the Tucson conference room but we

Page 70

[1] had Lawson, McDowell, myself, John, Bill [2] Morgan was the MTO at Phoenix, and Ted Ingram [3] was the MTO on territory west of Tucson. And [4] devised a plan to do additional switching at [5] Tucson preblocking cars for industry so that [6] we wouldn't have to reswitch the cars at [7] Phoenix.

[8] And then we started the [9] implementation of this. One of my biggest [10] concerns was that I would have labor [11] resistance particularly at Phoenix because we [12] were going to reduce jobs. And noticeably [13] that didn't occur. We didn't have labor [14] issues at Phoenix or anything on this and it [15] initially was successful.

[16] Now, I don't remember how many jobs [17] we had reduced at Phoenix, probably cut them [18] in half. We had taken yard tracks out of [19] service because we were performing all of [20] this in the Tucson yard. But what coincided [21] with this is there was a lot of problems [22] developing in the Houston area and Brad King

Page 71

[1] who I don't recall may be an assistant vice [2] president of operations or something like [3] that. He went to the Houston area and said [4] the only issue we have down here is we need [5] more crews. So they put out a bulletin for [6] borrow-outs and, of course, we still do this. [7] If we run a shortage in an area we bulletin [8] jobs where we pay the folks extra money to [9] come here. We give them a per diem and we [10] put them up in a room and they borrow out at [11] a different location.

[12] Well, when they put that bulletin [13] up everybody in Phoenix left. It just went [14] like that. And now we were down to maybe [15] having one job working in the yard to serve [16] 520 customers and the situation began to boil [17] over. We were getting in big trouble there.

[18] At the same time because of [19] operating issues in other areas and mostly [20] Houston more traffic was coming into the [21] Tucson yard to be switched. Now, that wasn't [22] in our plan initially so Tucson began to

Page 72

[1] suffer.

[2] It probably came to a head — I was [3] on vacation at the time. I was in Colorado. [4] And I was getting telephone calls. I got a [5] call from the Vice President of Damage [6] Prevention who was desperate because we had [7] refrigerated shipments in the yard at Tucson, [8] Arizona, lots of them, and these refrigerated [9] shipments, you know, if you let them heat up [10] you've just lost $100,000 or more for every [11] load.

[12] And they had been attempting to [13] work with John to get these cars switched to [14] where they could fuel them and the response [15] they got from John Grother was get 5-gallon [16] buckets and go find them. Well, that really [17] was a serious, serious situation.

[18] So I returned to Tucson. And when [19] I got on the airplane in Denver Tom Murphy [20] was also on the plane and, of course, he told [21] me that they had made some arrangements to [22] move John. And there was another individual

Page 73

[1] that already come to the Tucson area as a [2] manager. He was a borrow-out manager from [3] Kansas City. And so after we arrived at [4] Tucson we met with John and advised him that [5] he was demoted to MYO at Houston. And we [6] then offered the permanent position to a [7] gentlemen by the name of Tom Parr that we had [8] borrowed from Kansas City.

[9] Now, prior to all of this [10] happening, I mean, there were other issues [11] going on at Tucson and perhaps we did have to [12] give too many order to John because John [13] wasn't giving them himself. And at one point [14] I had Mr. Grother in my office. I think I [15] was using a yellow pad of paper and gave him [16] what we call a developmental action plan.

[17] Now, that's a fancy plan or a fancy [18] name but basically I gave him about five [19] bullet points. You need to do this and you [20] need to do this. Now, I don't remember what [21] all those points were. I mean, I know one [22] thing was he needed to get out of the office.

Page 74

[1] He needed to spend time in the yards. He [2] needed to know what was going on out there. [3] But the other items I don't remember.

[4] And I guess to summarize all I can [5] is John was demoted because of job [6] performance. Now, the issues that went on at [7] Tucson, the service issues and everything, [8] they were insurmountable no matter who was in [9] charge. It was a tough time for the Union [10] Pacific railroad. But it was also time we [11] needed the best people we could get there and [12] John wasn't up to the charge.

[13] **MR. LOOMIS:** Thank you.

[14] **MS. ROSS:** Thank you.

[15] **MR. LOOMIS:** First of all I'm going [16] to take that damn thing off because it [17] catches on my arm every time I move. I'm [18] going to make an assumption, Lynette, just [19] making sure you understand my presentation. [20] I'm going to make an assumption that you have [21] read the submissions and studied the exhibits [22] and I'm not going to go through them ad

Page 75

[1] nauseam and bore you to death. And the fact [2] that I don't refer to them doesn't mean that [3] I don't have faith in the reason I put them [4] in there but I just want to hit what I [5] consider the highlights.

[6] **MS. ROSS:** That's a very good [7] assumption and I think that's a great way to [8] proceed.

[9] **MR. LOOMIS:** I think that there's [10] another aspect of this switching experiment [11] that we, we being Union Pacific, pointed out [12] on page 29 of our submission in that yes, the [13] switching experiment to move blocking out at [14] Phoenix to Tucson occurred after the merger. [15] But it did not occur as the result of any [16] rights that Union Pacific gained from the [17] merger.

[18] Tucson was a former Southern [19] Pacific point. Phoenix was a former Southern [20] Pacific point. As I pointed out on page 29 [21] of the submission, they were SP points. They [22] were not UP points. There was no merger of

Page 76

[1] UP and SP yards and trackage in the Phoenix [2] and Tucson areas. There were no former UP [3] operating employees within 300 miles of [4] either Tucson or Phoenix. In fact there were [5] no former UP operating employees in the [6] entire State of Arizona.

[7] That move as ill-advised as it [8] turned

out to be because of some of the situations that Mr. Packard explained was a move that could have been made pre-merger by Southern Pacific and it was not dependent upon any of the authorities gained in the merger. That is one reason why Union Pacific's position is that the events which happened to John Grother were not as a result of the merger.

The events that happened to John Grother as I understand them and as I heard Mr. Packard explain them were related to Mr. Grother's failure or inability, if you will, to step up to the plate and help the problem out at Tucson, not in retaliation for

Page 77

the fact that the Phoenix switching experiment, as Mr. Grother calls it, was eventually eliminated and the work was put back in Phoenix. I think that's a distinction this board needs to keep in mind.

And with that and my confidence that you have reviewed the materials on the issue of causality on primary argument we don't have anything more at this time.

MR. MacDOUGALL: Yes, this is the first, of course, that we've had any testimony from Mr. Packard. If it's a convenient time to break this would be convenient for us if we can come back after lunch and cross-examine and maybe put Mr. Grother back on if you think it's appropriate.

MS. ROSS: I've said that Mr. Loomis has an opportunity to file a post-hearing brief. Your post-hearing brief as well can address not as new argument but as amplification or emphasis what you heard

Page 78

today from Mr. Packard in the event there's something that you forget to say today during this submission. So sure, we can rest. I think everybody's probably getting a little hungry. We can go off record.

(Whereupon, at 12:13 p.m., a luncheon recess was taken.)

Page 79

AFTERNOON SESSION

(1:02 p.m.)

MS. ROSS: We're back on the record. It's one o'clock and we're going to proceed with Mr. Grother's response to Union Pacific's response on causality.

MR. MacDOUGALL: May I ask him some questions?

MS. ROSS: Yes.

MR. MacDOUGALL: Before I do I was going to inquiry of Mr. Loomis' counsel will this witness be recalled for either of the other two phases of the case.

MR. LOOMIS: As I explained during the conference call that we had, some of his comments might be significant on the employee, the level of the job, the level of the position that Mr. Grother held. So for that he might have some relevant comments but with the laches, no.

MR. MacDOUGALL: He will be recalled then for the employee issue?

Page 80

MR. LOOMIS: Well, I would say that depends. I'm not trying to be coy. If it comes to a question of exactly what the duties of a senior manager of terminal operation is as he perceived them to be that would be his only contribution there. And we might actually be doing him a favor by going into that now and then we can turn him loose if you wanted to. I don't think there's any real reason he needs to sit here and suffer through this — excuse me, participate through the rest of this.

MR. MacDOUGALL: We did our case orderly that way.

MS. ROSS: So are you going to reserve —

MR. MacDOUGALL: I'll reserve to the crux on the other issue and then I can ask him questions on both. Then he stay for the rest of the entertainment or whatever he wants.

MR. LOOMIS: Where are we?

Page 81

MS. ROSS: I guess we're on 2.

MR. LOOMIS: Are we going to employee now?

MS. ROSS: We're going to go the employee —

MR. MacDOUGALL: As to this person.

MS. ROSS: With Mr. Packard's.

MR. LOOMIS: Well, I think it probably would serve both needs here and I allow you to ask your questions and allow Ken to leave. If we heard from Ken, I mean, this would not be my presentation on the employee but just to start off with ask him to give us his understanding of the duties and responsibilities of this SMTO position. And then you could ask him your questions and then when you're done with that I see no problem with turning Mr. Packard loose if that's okay with you.

MR. MacDOUGALL: You want me to ask him questions first on the employee and then go back to the causality?

Page 82

MR. LOOMIS: I don't really have any hard feelings one way or the other. It just seems to me to make more sense to have him do this description and then you could ask him questions about employee or causality unless you want to split them into two.

MR. MacDOUGALL: No, no. That's fine. I'm suggesting you do it all at once.

MR. LOOMIS: That will work for me.

MR. MacDOUGALL: Or I ask him questions and then you know.

DIRECT EXAMINATION CONTINUED

BY MR. LOOMIS:

Q: I'm not trying to put thoughts in your mind but could you give us your concept of what a senior manager of terminal operations' duties and responsibilities are? You were there at the time and tell us what you expected of that senior manager of terminal operation. What's your understanding of that position?

A: Well, I've currently got a senior

Page 83

manager of terminal operations there at Council Bluffs and it's basically the same. He's responsible for the operations of the terminal. First of all, in reference to his subordinates he does the performance reviews on his MYOs or MTOs if he's got one assigned. And he's got, of course, a budgetary responsibility as everyone does. He's got a safety responsibility. He's got responsibility for the transportation plan within the terminal and serving the customers within the terminal. He's got all that responsibility.

Q: Could you tell us in the event that new employees were being hired in an area what if any of the senior manager of terminal operations responsibilities in that process, new brakemen, switchmen being hired, and secondly if there are noted rules, infractions, et cetera, what the senior manager of terminal operations' participation would be in the discipline process?

Page 84

A: First in reference to hiring of train and enginemen, of course, Union Pacific is currently hiring a lot of them. We're hiring a lot of them at Council Bluffs and at Boone, Iowa. And currently the hiring process is there is someone from human resources that participates in the initial screening and interviews and there is the local MTO or senior MTO if there's one there is the other part of the participation in the hiring. They make the selections and then they are greatly

involved in the training.

Now, at that point human resources, they're done. They've participated in the initial screening and interviews but from there on, why, it's the local MTO, senior MTO, that's responsible then for the training that takes place of the new employees.

In reference to discipline the local managers have the responsibility to initiate the discipline process if it needs to be initiated. The final issuance of

Page 86

discipline, it's been this way as long as I can remember, rests with the superintendent as far as the issuance's concerned. But very, very rarely, you know, does a superintendent initiate discipline. He's usually bit too further removed from what happened in the initial investigation of the incident.

Q: Do senior managers of terminal operations ever conduct discipline investigation hearings? Do they ever testify at those?

A: Yes, they do both.

Q: After the investigation is completed how is the information that was developed at that investigation transmitted to the superintendent?

A: There is a transcript much as we're doing here with the court reporter. There's a transcript of the investigation put together and then it's given to the superintendent for his review. And, of

Page 87

course, in the review process he's looking for, you know, procedural errors. If there's anything that jumps out, well, they shouldn't have done this. And then he looks to see if the information contained in the transcript of the investigation substantiates the charge against whoever it was. And if it does then under the upgrade policy he'll issue the discipline that corresponds with the charge.

MR. LOOMIS: Thank you.

CROSS-EXAMINATION

BY MR. MacDOUGALL:

Q: Sir, let's do the last series of questions first. They're fresher in mind. This is the situation today, is it not, that you're describing as the duties? You talked about Des Moines and so forth. You talked about Iowa and so forth.

A: I just drew the correlation that I currently have a senior manager of terminal operations at Council Bluffs. The duties and responsibilities are basically the same as

Page 87

they were.

Q: They're system-wide, is that what you're saying?

A: Correct.

Q: You were here when Mr. Grother testified this morning and I think his answer to response to his question number 7. He said that this system went into effect in 1999, the duties you're talking about. I want to stretch your imagination. Are you saying that what you've described as these duties are the duties that Grother had back in 1997? Wasn't this a plan that UP put in actually two years later, the thing you're describing?

A: He was senior manager, senior terminal manager.

Q: Yes, but these qualifications you're talking about, duties of the job, UP didn't put these things in day one, did they? After seeing Mr. Grother's testimony, they weren't put into effect in 1999. I refer you

Page 88

to question 7 of is reply statement.

MS. ROSS: I think it refers back to page 21 of the UP submission.

THE WITNESS: His item 7 that you're referring to appears to be the job description as it is posted in a CNet posting of the job.

MR. MacDOUGALL: It's on page 21 where he lists these.

MS. ROSS: Right, it's nine items.

BY MR. MacDOUGALL:

Q: If you know the answer. If you don't know the answer —

A: Well —

Q: What was in effect in '97 as opposed to '99?

A: To the best of my knowledge this was in effect in '97. I'm not exactly sure at what point they put the CNet on the Internet and developed the job descriptions for the position. I'm not sure when that took place. But I think that's probably at

Page 89

what point they quantified them in this manner. But this is basically a job description that goes back to a senior manager or you can bump it down to a train master or whatever for as long as I can recall.

Q: When did you leave Tucson?

A: I think it was like May of 1996.

Q: Where did you go from there?

A: I was transferred to superintendent in the Harriman Center in Omaha.

Q: Is that where you're at now?

A: No.

Q: What's your pedigree?

A: Shortly after I was assigned as superintendent to the Harriman Centers reorganization took place on the railroad. And at that point there were a number of new positions created all over the system and such as that. And after that took place I was assigned as a senior director in the Harriman Center. And I guess all I can say

Page 90

about that is I really didn't enjoy the position and requested if at all possible to leave the Harriman Center. And so they assigned me a Council Bluffs service unit right across the river and that's where I am today.

Q: Did I hear you correctly that you first came to Houston in January 1997?

A: To Tucson.

Q: I'm sorry, to Tucson.

A: Correct, correct.

Q: Where were you before you came to Tucson?

A: Before I was there I was superintendent in Kansas City.

Q: Had you read the Grother submission before you came here today?

A: I've seen it, yes.

Q: Am I correct in understanding your testimony that you felt that Grother had some problems when you first came to Tucson?

A: Yes, I was concerned.

Page 91

Q: But you promoted him and gave him a job, the title, on April 16th? That's 4-1/2 months that you were there.

A: The 4-1/2 months that I was there, again, when I was asked to make the selection I hadn't been there that long. There was a lot to do. There was just an awful lot to do. The Union Pacific had a different discipline system. The Union Pacific looked at things differently than what the Southern Pacific did. We had a lot of housekeeping things to do.

It was a tremendous challenge and unfortunately in a lot of areas we weren't prepared. We had a different way of crew calling and our crew calling efforts were terrible. We had a lot of troubles in getting the right crews on the right jobs. Again, the discipline system was something totally new that I had meetings with all of the general chairmen and local chairmen that I could get together with to explain it to

Page 92

them. Housekeeping-wise it's 1997 and we've still got water towers and coaling stations from one end of the railroad to the other and things such as that.

And the territory that I had, again, was vast and, to be perfectly honest, I didn't get to the last point on my territory probably until, like, April of '98. I spent a lot of time, of course, in El Paso, a lot of time in Phoenix, but it took me almost a year to get to Alpine, Texas, so I walked a lot of territory. A lot of problems, a lot of issues.

Q: Let's get back to Mr. Grother now. Did I hear you say that you made a development action plan?

A: Yes. That's the formalized term that we use for it in the PDR process. You know, in my past I've done probably four or five of these but it's typically not a big formalized thing. I typically come up with about four or five bullet points.

Page 93

Now, the PDR forms that we have today have got sufficient areas in them that I don't always have to do that now. Of course, you can keep expanding on the ones today. They're in Lotus Notes. And if you need more room you can get more room. But they've got areas such as strategic initiatives and you can go in there because I do that today. You can list things that you need to do.

Q: Did you give Mr. Grother a copy of this evaluation?

A: I don't think that I did.

Q: Did you send one to headquarters or somepiace else?

A: No. You don't send them in. It was put with his PDR form locally there at Tucson.

Q: In other words did you give him a copy?

A: I don't think that I did.

Q: You mentioned the situation at

Page 94

Tucson was rather hectic or rather impossible. I forgot the exact words you used but something of that nature. At the same time you said that Grother was asked to transfer or did transfer because of "job performance." Did you mean by that that he wasn't the person to do the job or that he could do the job but wasn't doing the job? When you use the word "job performance" in a chaotic situation at Tucson it's a little unclear to me actually what you're talking about.

A: Well, we had a lot of areas that were having big issues.

Q: We all know that.

A: El Paso was having tremendous issues and all I can say is from my experience, just using hem for an example, you had Spence Murray there and they were facing more or less an impossible situation but we had no outright crisis, shall we say, and from the time that I spent there and with

Page 95

them I know they were giving it their absolute best and that they were doing everything that could really be done.

Now, again we come back to Tucson and I understand the service issues and what brought them on but we cannot tell people to go pound sand when you've got these refrigerated units in the yard and the engines are dying on them and every load is worth at least $100,000 and we aren't going to do anything to try and get them fueled?

Q: Was that the real problem you had with Grother

A: That happened at the same time that the issues at Phoenix finally erupted.

Q: Came together?

A: Yes. Again, when they bulletin those jobs in Houston everybody left and we had nobody left at Phoenix to switch Anheuser Busch, Ford, and so the calls, you know, were going straight to Omaha and it was a crisis mode then at Phoenix. And it all came

Page 96

together, as I say, while I'm in Denver on vacation and my vacation ended rather abruptly.

Q: And it wasn't Grother but it was the times? Is that what you're saying, a combination of all these things, Phoenix, Tucson?

A: Right, right. Now, then, you know, John certainly had no part or played no part in the failure of Phoenix. Nobody did other than maybe crew management that let everybody in the world go to Houston.

Q: Let me interrupt. Lots of shippers came to Washington during this period of time right down the street here.

A: Absolutely. All of the problems appeared to start in the Houston area. I guess, you know, of course, the Union Pacific had a big presence in Houston and so did the Southern Pacific. A lot of operating issues developed down there and then they just gradually spread across the system, really.

Page 97

Q: People would disagree with the term "gradually." Is it fair to say that it wasn't any poor job performance by Grother, that he may have been able to do the task that these combined things called for at that time?

A: No, it was a big task but the situation in Tucson — John talks in some of his briefs about taking orders and stuff, taking orders from me and taking orders from Lawson. Maybe there was a lot of that because somebody had to be making some decisions to do some things. And a lot of those decisions weren't being made, or if they were being made, they weren't in the best judgment.

Q: Of course, you and McDowell were both at Tucson at this time?

A: Correct.

Q: You weren't at other parts of the division like Yuma or Phoenix? You were right there with him, right there at —

Page 98

A: We were headquartered there.

Q: Getting back to my question, what was it, the combination of all of these things or was it this person suddenly had "job performance" problems? And then is it the job that was the problem?

The reason I say that is the word "job performance" has been used many places and it could be considered a touchy word, that word "job performance." Does it mean that the person was bad or does it mean that the job just got out of his control and out of all the people's control too. This term "job performance" has been used by other people.

A: John along with all the other mangers were given a big task and in my opinion from my evaluation of the situation and such the great majority of the managers were performing and doing as best they could do.

You know, shortly after I got to

Page 99

Tucson and I just toured the yard I go into the switchmen's locker room at the other end of the yard and there's sofas in there, lounge chairs, stereo systems, and I'm saying this is not a work place here. It's not the things that we need to do. We don't need to have a lounge in the switchmen's shanty, stereo and all the amenities. These are things that shouldn't be allowed.

Q: Well, you appreciate that there was a division superintendent on the SP over Grother. He wasn't the top person in that area by far. Do you

think it was his fault or do you think it was maybe somebody else's fault? That was a big division. As you know, it was a big division on the SP. And Grother was not in charge, was not the division superintendent. Do you have any thoughts on that?

A: Myself, no, I didn't give much thought to that. Apparently someone else did because they didn't retain the SP

Page 100

superintendent that was there.

Q: You mean the division superintendent?

A: The division superintendent, correct.

Q: You mentioned responsibility for the budget. Was the Union Pacific budget in place for your division or your unit in early 1997?

A: There was a budget in place in early 1997 for the division.

Q: Did you do it as responsibility or did Mr. Grother have responsibility?

A: Well, you know, the superintendent's responsible for the service unit budget, which is further broken down into each area. So Bill Morgan, for example, at Phoenix would be responsible for the budget constraints in Phoenix and Spence. Murray would be responsible in El Paso and John would have the responsibility in the Tucson area.

Page 101

Q: Would have or did he have, did you give him a budget?

A: I've got to say I don't know. I don't know.

Q: Were you hiring any people in Tucson in early 1997?

A: I don't believe so.

Q: Do you recall when or why the so-called replan experiment was stopped? Do you recall when it was stopped?

A: Well, yes, it was stopped when Mr. Murphy and myself arrived back in Tucson. He immediately got a hold of crew management and told them to put all the jobs back on in Phoenix and that was pretty much the end of it.

Q: And was that the day that you told Mr. Grother that his services wouldn't be needed any more in Tucson?

A: Yes, it was.

Q: I have one more question. You talked about the evaluation of Mr. Grother in

Page 102

your office and a report. You're not sure you gave it to him and you're not sure it was even filed. What about —

A: It was filed.

Q: You think it's filed where?

A: Normally —

Q: Do you know where it was filed at that time in these hectic days, as you say?

A: It was in my desk.

Q: Was it sent to Omaha?

A: No.

Q: Is that called an interim PDR or is that something different? Did you ever make one?

A: We do interim PDRs. Of course, sometime near the first of the year you make your job agreement and that's done on the PDR form. So you make your job agreement the first of the year and then in the middle of year you should do an interim, a mid-year review, and then you do one at the end of the year.

Page 103

Q: Did you do one of these things with Mr. Grother the middle of the year?

A: I think that my DAP, as I refer to it, was probably his mid-term.

Q: And the thing you talked about in your office?

A: Yes.

Q: It's in your desk?

A: Yes.

MR. MacDOUGALL: That's all I have.

MR. LOOMIS: Are you done?

MR. MacDOUGALL: Yes.

MR. LOOMIS: We're ready to move into the employee presentation that I'm going lead off on now. Is that where we are? Do you have any other rebuttal causality stuff?

MR. MacDOUGALL: Yes, one on causality which apparently we have the burden on and I would recall Mr. Grother on this issue and on the employee issue also.

MR. LOOMIS: Are we through with Mr. Packard?

Page 104

MS. ROSS: We've got Mr. Packard's statements on both issues, causality and employee. I noticed some of your questions covered both. We thought they might because they're linked but, Bill, you haven't made your presentation yet on employee?

MR. LOOMIS: No, I haven't even started my employee presentation but I have no objection if Mr. Packard be excused at this point.

MS. ROSS: I have no objection.

MR. MacDOUGALL: Do we have the right to answer Mr. Packard's testimony?

MR. LOOMIS: As I view this, you led off with causality. Then I did my causality. Now you can go into rebuttal on causality before we even get to employee.

MR. MacDOUGALL: I thought we'd that because he didn't want to be here, I just didn't want to have him leave and then something we couldn't follow.

MR. LOOMIS: I just kept one

Page 105

comment here that I'm not up on procedural on. I noticed that Mr. Packard was sworn as a witness but to date Mr. Grother has not been.

MS. ROSS: I think we had said that we would swear Mr. Grother in after lunch when he gave his additional testimony.

MR. LOOMIS: So you hang around until we finish the causality and then you can take off.

MR. MacDOUGALL: We'll swear him in for everything. You say that Grother hasn't been sworn for anything?

MS. ROSS: His verified statement spoke for itself and likewise this did because this was a sworn statement so I didn't feel at that point it was necessary to swear him. We can swear Mr. Grother.

MR. MacDOUGALL: Because he gave it orally I'd like that to be testimony because really that exhibit, which is identified as GH38, is the same as his oral testimony. I'd

Page 106

like to have that oral testimony considered sworn. He verified it anyway.

MS. ROSS: Right, and since he read it and I carefully followed his reading and noticed he did not add or embellish.

MR. MacDOUGALL: He made corrections at the beginning.

MS. ROSS: Well, I think from the correction standpoint we can take that as good intention.

MR. MacDOUGALL: There's a little bit on the DTO, the new position, that wasn't there at the time.

MS. ROSS: Assuming that Mr. Grother was truthful in any prior comment, can we have you just acknowledge.

MR. LOOMIS: Yes, I'll acknowledge that.

[19] **MS. ROSS:** Well, let's swear you at [20] this point for the duration of the hearing. [21] Whereupon, [22] JOHN E. GROTHER

Page 107

[1] Was called as a witness and, having been [2] first duly sworn, was examined and testified [3] as follows:

[4] **MR. MacDOUGALL:** We assume his [5] previous oral testimony was being sworn?

[6] **MS. ROSS:** Yes, for purposes of [7] this transcript that we'll make a note that [8] the previous testimony everything in [9] connection with GH28, any extra comments or [10] something that might have strayed from this [11] document, is considered sworn testimony.

[12] **MR. MacDOUGALL:** This will be the [13] rebuttal to the causality.

[14] **DIRECT EXAMINATION**

[15] **BY MR. MacDOUGALL:**

[16] **Q:** Mr. Grother, could you tell us what [17] the reefer situation was at the Tucson which [18] Mr. Packard's describing in his testimony in [19] your view of the situation?

[20] **A:** There's two types of reefer [21] activity at Tucson. Tucson was the home of [22] Pacific Fruit Express and as such empty

Page 108

[1] reefers came there to be fixed in great [2] numbers. They were fixed. They were turned [3] back out. I was the systems — that was the [4] whole — on the Southern Pacific at Pacific [5] Fruit Express. That's were that was done.

[6] The other source of reefers were [7] from time to time a car would show up at [8] Tucson on either a main track train or come [9] in from somewhere. God knows where. And it [10] would be a problem. From time to time it [11] would be out of fuel. And there may have [12] been an occasion when we had — can't recall [13] this occasion. I recall one time we had a [14] discussion about intermodal reefers and I had [15] told him that a vice president with SP had [16] told me that you don't have to fix the [17] engines on a intermodal equipment because [18] that's their equipment and if it goes sour [19] the company's off the nook.

[20] So I was relating that to him and [21] so maybe that's why he remembers something [22] about engines. I don't know why he remembers

Page 109

[1] what about engines. All I can say is I would [2] never take a $100,000 load of shrimp and say [3] we're not going to put fuel in it. We were [4] going to get fuel to it.

[5] Now, the fact that a truck can [6] reach a loaded reefer is just as good as [7] somebody taking a switch engine, digging it [8] out of a completely full yard, and taking it [9] over to a clear track. I mean, that makes no [10] sense when you're pounded into the ground by [11] moving 15 tracks of traffic from Phoenix and [12] overlay it on little Tucson and the yard is [13] wall to wall cars to tell me I've got to dig [14] out one car and take it and put it over here [15] when they could just as easily fuel it with a [16] truck. So I don't know what he's talking [17] about other than that.

[18] That's the two types of reefer [19] moves we had at Tucson. We had empty reefers [20] in a preponderance and we had an occasional [21] load going by on a main track train but it [22] usually came there to our attention because

Page 110

[1] no one else would stop the train like West [2] Colton or Yuma or El Paso or Houston and cut [3] it out and they would say now it's your [4] problem, Grother, and you've got to do it [5] because it's starting to rot now. And we're [6] in the middle of the desert and it's 120 [7] degrees and it's hot and I mean it's hot. [8] And so, yeah, we would take care of that. [9] That would be something we wouldn't do, [10] believe me.

[11] Now, in regard to when I say the [12] yard was wall to wall in my causality exhibit [13] here, Attachment 2 to my causality statement, [14] I pulled off the data record from 1997. And [15] I kept and, Ken, remember who's keeping this [16] stuff because it indicates the fact that I [17] pulled some data out of what went on before [18] they moved everything to Tucson and after.

[19] And the bottom line is we had 188 [20] average cars to switch before the experiment [21] began and a couple of the engines were, you [22] know, available for that. And after it began

Page 111

[1] it jumped up to 612. They say in their [2] submission 700. UP says 700. So we had this [3] huge increase in work to be done and we were [4] not authorized any more people. We already [5] talked about the people earlier being taken [6] out. And we were not authorized any more [7] people or overtime was only given when we [8] asked for it. We had to ask for it and be [9] granted overtime.

[10] **Q:** Mr. Grother, did you do the PDRs or [11] otherwise evaluate the MYOs?

[12] **A:** Yes. I did no PDRs on the MYOs. [13] Most of the processes of the UP in 1997 — [14] Mr. Packard arrived in January. I was [15] demoted in the middle of June just about. [16] The decision was made probably them. I don't [17] know. I was told June 26th.

[18] But at any rate our period together [19] was very short. The UP processes were not in [20] place. I did not do any PDRs on anybody. To [21] my knowledge no PDR was done on me either [22] interim or final or actually, as Mr. Packard

Page 112

[1] described, that was not done. I have no [2] recollection of that.

[3] **Q:** Mr. Packard has testified that he [4] had no recollection of giving a written [5] evaluation to you. Do you have any [6] recollection him giving a written evaluation [7] to you?

[8] **A:** No, none whatsoever. I was never [9] brought in for a counseling session. I was [10] never orally or in writing told that my [11] performance was —

[12] **Q:** What is the UP policy as you [13] understood it at that time with respect to [14] such evaluations? Were you to be given [15] copies of this? What was the rule?

[16] **A:** Well, at that time it really wasn't [17] discussed. I mean, these processes were [18] brand new to us. We were SP people. We had [19] no idea how they did their business. And as [20] it came out, as I learned about it after I [21] was removed, it became my understanding that [22] the supervisor in any company is supposed to

Page 113

[1] bring you in and counsel you. He's supposed [2] to give you a list of what the problems are [3] with a timetable for them to be fixed and [4] give you a copy of that and say do you [5] understand what we're doing here in any [6] company no matter what company it is but I [7] got nothing like that. Nothing was given to [8] me like that. There was no warning [9] whatsoever. They gave me the job April 16th [10] and two months later because this experiment [11] failed by life was destroyed.

[12] **Q:** Mr. Grother, the taking of traffic [13] from Phoenix and the increase of traffic at [14] Tucson, is your understanding that that was [15] part of the UP/SP merger plan?

[16] **A:** Yes, it was my understanding that [17] that was part of the merger plan, that they [18] saw ways they could free up both real estate, [19] as they pointed out, near downtown.

[20] **Q:** Do you have any exhibits that show [21] the plaintiff's file that —

[22] **A:** Under this booklet here which is

Page 114

[1] Part III, exhibits not including E2, we have [2] Exhibit No. 19, which talks about the [3] personnel issues and some other

issues. They were filed with the Union Pacific to the STB and in this plan on page 416, for example, they talk about moving from Phoenix in year 1, abolishing two nonagreement positions.

MS. ROSS: Let me just get where you are here.

THE WITNESS: Exhibit 19 page 416.

MS. ROSS: I've got it.

THE WITNESS: And on that exhibit on the left hand top side they talk about nonagreement personnel and they talk about it by current location. It says at the very top effects on applicant carrier's employees and the nonagreement folks are listed by year. They anticipate the effects and it talks in the first column of jobs abolished and then jobs transferred and so on and they show moving people on that page from Pocatello, Idaho, to Tucson, from Roseville to Tucson.

Page 115

On the next page they show moving people from San Francisco to Tucson and then, of course, from Tucson where I was affected to various places on page 417 in the middle where the big circle is.

So there was a known plan, it was published to the STB, and I was affected by it.

BY MR. MacDOUGALL:

Q: Was there an STB environmental report analyzing the change in traffic that was anticipated?

A: There was an environmental report, and that was Exhibit No. 20, the next exhibit in the same exhibition, and it deals with the increases in traffic which are described by my causality exhibit and also by previous testimony here today that there was a big increase in traffic and I figured as pointed out earlier today that it could have been done by anybody. No one could have made that work but I was scapegoated as an SP person.

Page 116

Q: Anything else with respect to Mr. Packard's testimony here today that I haven't touched on, anything else you'd like to say?

A: Well, I would like to say again the UP processes were not in place at Tucson in 1997. The budget wasn't in place. The PDR system wasn't in place. What we could do wasn't in place because everything was new and everyone's groping. When it blew up it blew up and when it blew up, I mean, it was like 16-hour days fire drill. One of the members of the group died. It was so bad that one of three SYOs in fact died. I mean, this was a hectic, hectic experience.

At any rate if my performance were so bad from the get-go, if it were determined that was the case, then I should have either been immediately severed because there were 800 people that were available to UP to pick from or I should have been given a formal interim PDR and a mandatory development

Page 117

action plan in writing to which I signed for. I was not given any of that. What I was given was a new title and told I had a job. Two months later when the experiment blew up I was shown the door.

MR. MacDOUGALL: Thank you. That's all I have.

CROSS-EXAMINATION

BY MR. LOOMIS:

Q: John, seeing as I've known you for 30 years can I call you John rather than Mr. Grother?

A: Sure, absolutely, Bill.

Q: John, if you go back to page 416 on your exhibit, I believe it's 19, where it shows a plan as I read this right in year one, now, in your understanding what is year one, between what dates?

A: Well, no one has ever explained that to me but my guess would be year one would be September 1996 for a year thereafter.

Page 118

Q: That would show that between September '96 to September '97 that they had planned to abolish two nonagreement jobs and between September of '97 to September of '98 they had planned to abolish one nonagreement job. I understood the impact of the question that Mr. MacDougall asked you was to substantiate the fact that this shutting and switching in Phoenix was part of the merger plan?

A: I think you're looking at the wrong page.

Q: Well, what point were you trying to make with page 416?

A: Okay, 416, the point there is that in year one two nonagreement persons I was led to believe that was the position of the train master and the braking assistant position were going to be eliminated in Phoenix because of this change.

Q: What change?

A: This movement of traffic from

Page 119

Phoenix out is what I was lead to believe.

Q: Approximately how many trainmen and enginemen worked in Phoenix on January 1, '97?

A: Well, I have no idea. That's — you know, that wasn't my territory.

Q: Well, if you go a few pages earlier to page 412 on that same exhibit and this page deals with enginemen who operate the switch locomotives, that shows in year two an abolishment of one engineer's job?

A: Yep.

Q: Not a single engineer's job was planned to be abolished in the first year?

A: Right.

Q: And if you go down to page 420 this is dealing with trainmen and it's my understanding this term "trainman" includes trainmen, switchmen, ground service, UTU-type personnel. It shows that in year 2 one trainmen job was going to be abolished at Phoenix, Arizona, no abolition of switch

Page 120

engine crews whatsoever in year 1.

A: That was the filing, yes.

Q: So how can you say that you think that the plan to shut down Phoenix and move the work to Tucson which would had a resulting reduction of trainmen and enginemen positions at Phoenix was planned and as stipulated as part of the merger application?

A: Well, like I said, number one because I was told that these positions, these nonagreement positions, were those jobs. That's what I was told. Now, in regards to the appropriateness of the filing, the accuracy of the filing, that's not my call to make. I'm sure there were a lot of things in these filings that were erroneous. I'm sure of that. And I do also note that on 420 or 417, rather, it talks about jobs transferred out of Tucson.

There was one each nonagreement person to be transferred out of Tucson in the years one — in year 1 there's just three, in

Page 121

year 2 zero, so there was three people to be transferred out of Tucson. So I can't vouch for the accuracy of this document. I didn't prepare this document. All I know there are a lot of mistakes in some of these merger filing documents and we all know the merger was a fiasco so the documents were probably part of that underlying fiasco.

Q: Well, my point is I don't see how you can make the contention that the plan to shut down the switching in

Phoenix was part [12] of the merger application plan when the [13] merger application plan itself called for [14] zero reduction of enginemen and zero [15] reduction of trainmen in Phoenix.

[16] **A:** But it does say nonagreement.

[17] **Q:** I'm talking about the engineers and [18] the trainmen.

[19] **A:** Right, I understand. I'm just [20] saying that could be an error or that could [21] be an omission, that could be any number of [22] times. It does nonagreement are going to be

Page 122

[1] affected and it does say for sure where I was [2] affected a nonagreement would be affected. [3] That definitely shows causality with my [4] situation where I was affected by this plan [5] that was filed with the STB.

[6] **Q:** How many yard master positions were [7] in Tucson?

[8] **A:** When?

[9] **Q:** Let's say January 1, '97.

[10] **A:** January 1, '97, around the clock

[11] or —

[12] **Q:** Total?

[13] **A:** Total?

[14] **Q:** Both regular and extra.

[15] **A:** There was about — there's three a [16] shift and the UP — that was one of the [17] problems that went on. The UP wanted to [18] immediately get rid of one of them and, of [19] course, they started rearing up my trigger [20] because they had problems and — there [21] because the yard was inundated with these [22] cars wall to wall and they were trying to cut

Page 123

[1] their jobs off and in fact they couldn't [2] understand that. So I can't vouch for this [3] document. This is not my document. I didn't [4] file this.

[5] **Q:** Well, you seem to be vouching for [6] one part of it but not the other so whatever [7] it is it is.

[8] **A:** Right, exactly. It mirrors the [9] merger itself.

[10] **MR. LOOMIS:** Are we ready to go [11] onto employee status or do we want to do more [12] causality?

[13] **MR. MacDOUGALL:** Employee status.

[14] **MR. LOOMIS:** Okay. As far as my [15] understanding is that you may leave if you [16] would like to, Ken. I can't understand why [17] someone would give up sitting here with this [18] joy and pleasure but if you want to leave I [19] won't take offense.

[20] **MR. PACKARD:** No, I'll stay [21] available.

[22] **MR. LOOMIS:** But you're free to go

Page 124

[1] if you want to go.

[2] With the understanding that we're [3] now moving to the second of the three issues, [4] the issue that was Mr. Grother an employee as [5] contemplated by the New York Dock labor [6] protective conditions, before I move into [7] that can we have a two-minute break?

[8] **MS. ROSS:** Yes. I was going to [9] suggest that.

[10] (Recess)

[11] **MS. ROSS:** We're back on the record [12] to delve into the carrier's presentation on [13] issue number two.

[14] **MR. LOOMIS:** Thank you and I have, [15] shall we say, developed a fairly extensive [16] briefing book to lead me through the points I [17] want to make today. So if it looks like I'm [18] reading parts of it I am but I wrote it.

[19] I will have, I think, four [20] exhibits. I think I have four exhibits that [21] I'd like to hand out that relate to this. [22] Should I do this now or as they come up?

Page 125

[1] **MS. ROSS:** Whatever your pleasure [2] is.

[3] **MR. LOOMIS:** In no particular order [4] move here. This will eventually be 47, I [5] think. This is the three ICC decisions that [6] Mr. Grother referred to on page 17 of his [7] submission and these are ICC decisions, a [8] total of 20 pages. I would move that this be [9] introduced as UH47.

[10] **MS. ROSS:** So entered.

[11] (Exhibit No. UH47 was marked for [12] identification and received in [13] evidence.)

[14] **MR. LOOMIS:** Next is a copy of an [15] ICC decision that is referenced on page 17 of [16] Mr. Grother's submission, Haskell Bell v [17] Western Maryland Railway Company, and I would [18] move that this be introduced as UH48.

[19] **MS. ROSS:** This is entered into [20] record as UH48.

[21] (Exhibit No. UH48 was marked for [22] identification and received in

Page 126

[1] evidence.)

[2] **MR. LOOMIS:** Third is a copy of an [3] arbitration decision that Mr. Grother [4] referred to in I believe it was his Exhibit [5] 24, Grother Exhibit E24. And I believe it [6] says in the submission that they reproduced [7] 11 pages of the Curley Award. I would like [8] to introduce as UH48.

[9] **MS. ROSS:** Forty-nine.

[10] **MR. LOOMIS:** Forty-nine, excuse me, [11] as the entire Curley Award, which is 46 pages [12] in length. You will note that on this Curley [13] Award on the left-hand side of some pages [14] there is a yellow line. Yours does not have [15] yellow in it? The yellow portion of this [16] award is the part that was reproduced in the [17] Grother submission. The portion without the [18] yellow line we just thought it ought to be in [19] the record.

[20] And finally I have an exhibit here [21] which is a reproduction of portions of the [22] collective bargaining agreement governing

Page 127

[1] trainmen and engineers on the former Southern [2] Pacific western lines and this is a portion [3] of Article 54 of the agreement covering [4] trainmen and it's a portion of Article 32, [5] Section 16 of an agreement covering an [6] engineer. I would move that that be [7] introduced as Exhibit UH50.

[8] **MS. ROSS:** That's entered.

[9] (Exhibit No. UH50 was marked for [10] identification and received in [11] evidence.)

[12] **MR. LOOMIS:** I think we're ready —

[13] **MS. ROSS:** Bill, did you enter 49? [14] I don't recall receiving —

[15] **MR. LOOMIS:** Well, I would move [16] that the Curley Exhibit, arbitrator's [17] decision and award in the matter between [18] Thomas M. Curley et al., Missouri Pacific [19] Railroad Company, David Brown, Arbitrator, [20] dated May 11, 1987, be entered as UH49.

[21] **MS. ROSS:** So entered. I think we [22] have them all.

Page 128

[1] (Exhibit No. UH49 was marked for [2] identification and received in [3] evidence.)

[4] **MR. MacDOUGALL:** Can I make a [5] statement? These are being introduced as [6] evidence actually. I think that the [7] committee can take official notice of any [8] awards or court decisions. They don't have [9] to be filed as evidence. There's nobody here [10] to testify that so and so said so and so. [11] These are official. They're guaranteed as [12] the official awards or citations. I'd say [13] that Mr. Loomis can cite these things without [14] having them introduced or received as [15] evidence.

[16] **MS. ROSS:** I think the purpose of [17] this process is to note them as additional [18] exhibits to the existing submission to keep [19] that chain going that we left off with. But [20] yes, you're right. It can always be cited. [21] Presumably things could be cited in the post- [22] hearing submissions and not be referred to as

Page 129

an exhibit.

MR. LOOMIS: That's all the exhibits I have at this time.

We're here today for the settlement of a dispute involving the interpretation, application, or enforcement of the New York Dock protective conditions. And this committee meeting today was established for the purpose for resolving such a dispute between Mr. Grother and Union Pacific Railroad.

This case in which an individual is not represented by a labor organization seeks benefits under New York Dock is not unique or ground-breaking. There have been several previous arbitration cases on this issue. Union Pacific has presented many of those previous arbitration cases in its written submission and believes they established an overwhelming precedent this committee cannot ignore.

Prior to reviewing those cases,

Page 130

however, Union Pacific would like to comment on Mr. Grother's apparent lack of acceptance of previous New York Dock arbitration awards as precedent. And as I go through this I'm going to quote from Mr. Grother's submission.

On page 16 of Mr. Grother's submission, top line half way through the page, he states that although arbitration panel decisions may be helpful such panels and their neutrals frequently are oriented in a context of carrier versus organized employee interest, that is, unions. Here the employee is not and never has been represented by a railroad employee bargaining unit although he was eligible to do so.

Page 23, same submission, second paragraph, "Employee does not accord much weight to arbitration decisions denying 'employee status.' The arbitration machinery under New York Dock does not ordinarily render decisions which are published in various libraries or made generally available

Page 131

to the public. The arbitration is administered as part of a railroad labor organization arrangement which serves to prejudice the nonunion employee."

Top of page 23, first line starting with the fifth word, "Some arbitration decisions and miscellaneous pronouncements by the former ICC and STB would deny 'employee' protection on various theories such as an employee not being a member of a union, 'managerial' employee, 'supervisor,' and the like. These decisions are incorrect as a matter of law."

Down at the bottom of page 23 right under the heading there, "Several arbitration awards under ICC or STB protective conditions awards under ICC or STB protective conditions which have come to the attention of the employee clearly have failed to correctly interpret the criteria for determining 'subordinate official' or 'employee' under Section 11326."

Union Pacific has a different view,

Page 132

if you will, of the process of arbitration under New York Dock and the body of case law, if you will, that the arbitration decisions rendered under New York Dock create. We think that the prior arbitration awards, and there are several that we have cited and included the full exhibit or the full decision in our brief, form a case law and deal with identically the same situation here, an employee under Article IV of New York Dock who is not represented by a labor organization contending he is an employee under New York Dock.

Union Pacific's argument that Grother was not an employee for the purposes of New York Dock at the time of his salary reduction on or about July 1, 1997, has three parts. In other words within my presentation on the employee status I'm first going to review the on-point precedent, which is the group of the previous New York Dock arbitration awards dealing with that issue.

Page 133

Second will be a rebuttal to that portion of Mr. Grother's submission in which he argues items other than previous arbitration awards should be controlling. And finally Union Pacific will explain why the position occupied by Mr. Grother immediately prior to his salary reduction falls into the category of an official position.

First a review of the previous New York Dock arbitration awards. Starting with Exhibit 24 to the Union Pacific submission is the case of Mr. Bond and Topolosky. This is an arbitration award arising under Article IV of New York Dock. In fact all of these arbitration awards I'm going to briefly review arise under New York Dock Article IV. This arose in connection with the UP/MP/WP that's Union Pacific, Missouri Pacific, and Western Pacific, merger and they deal with events that took place in 1983.

Dana Bond was an assistant

Page 134

controller of accounting operations, had a salary of $77,256 plus a $20,000 bonus, and Michael J. Topolosky was a manager of personnel accounting, made $48,240. He reported to Bond. Both of these people left the company in September 1983.

Now in Exhibit 24 I'm going to go to page 12 of that exhibit and if the system worked right, can't guarantee that it will work right, the quotes that I'm going to read to you are all yellowed so that you can pick them out easily.

On this point the carrier contends that when the ICC used the phrase " employees of the railroad who are not represented by a labor organization" it was extending the protection of New York Dock conditions only to those employees and subordinate officials who are both subject and entitled to union representation but who are not represented. In the committee's view a review of the industry use of the term " employee" supports

Page 135

this contention.

Page 15 of that same award — got the a problem already because the one I'm looking at isn't yellowed here but that's all right. The last paragraph of that page. Is yours yellowed? No? Well, at the last paragraph on page 15. "The committee believe that is particularly noteworthy that one federal district court considering ICC job protection provisions have ruled that 'employees' encompassed persons (including subordinate officials) covered by or subject to collective bargaining agreements under the Railway Labor Act but not officers or department heads and those in the next echelon such as assistants and staff members to the department heads."

The court's definition of "employee" as excluding officers and department heads and those in the next echelon such as assistants and staff members to the department heads is applicable to the

Page 136

claimants. Mr. Bond was responsible for all accounting operations and Mr. Topolosky was responsible for all personnel accounting. The award found that neither Bond nor Topolosky were employees subject to New York Dock conditions.

You go to award 25. This is a case of James M. Benham. This case arose, again, Article IV New York Dock, as part of the Guilford acquisition of the Delaware & Hudson Railway. It was a

1984 event. James Benham [12] was a manager of pricing and marketing [13] intermodal. He moved from Albany to North [14] Billerica, given relocation expenses, elected [15] to resign a little more than one month later. [16] But one year later he retained a lawyer.

[17] On page 9 of that award, the top [18] paragraph, it's highlighted or should be [19] highlighted. "Unfortunately, the ICC has [20] never formulated a precise definition of [21] either "employee" or "official," however, as [22] a result of ICC administrative rulings,

Page 137

[1] judicial decisions, and arbitration opinions [2] under the New York Dock conditions criteria [3] have evolved to assist us in determining [4] whether Mr. Benham was an employee as he [5] claims or as an official as the carrier [6] asserts."

[7] Then on the bottom of that same [8] page, the start of the last full paragraph, [9] "An individual's rank and job title have not [10] considered controlling elements when [11] determining whether an individual claiming [12] protective benefits is an employee or an [13] official. Rather it is the nature and job [14] content of his or her position that is [15] determinative; however, one's salary has been [16] deemed to be a relevant consideration. This [17] committee wishes to state that in our view [18] the degree of supervisory and policy-making [19] responsibility required of a position being [20] evaluated must also be weighed."

[21] On page 11, staring with the second [22] word, "For example, it appears he did not

Page 138

[1] supervise any employees. He had no authority [2] to either hire or fire employees. His salary [3] was less than that earned by many unionized [4] rank and file employees on the property and [5] Mr. Benham's supervisory and policy-making [6] responsibilities were limited.

[7] "According to the claimant he [8] merely applied rates based on a predetermined [9] formula calculated by management. Were our [10] analysis to end here this committee would be [11] inclined to agree with the claimant that he [12] was an employee, not an official as claimed [13] by the carrier.

[14] "However, the facts also evidence [15] that Mr. Benham's position as manger, pricing [16] and marketing intermodal, was never [17] represented by a labor organization on the [18] Delaware & Hudson Railway Company. Nor [19] evidently did any labor organization ever [20] attempt to represent this position." The [21] award found that Benham was not an employee [22] and thus not entitled to protective benefits

Page 139

[1] of New York Dock.

[2] Maeser, Murphy, Sengheiser, and [3] Shupp, Exhibit No. 26, another case arising [4] from the UP/MP/WP merger. UP wanted to move [5] the jobs and the claimants from St. Louis to [6] Omaha. B.J. Maeser, general manager of [7] marketing commodities, $75,000 salary, [8] resigned with a separation allowance July of [9] 1983. T.P. Murphy, administrative assistant [10] to the general manager of marketing [11] commodities, he worked for Maeser, $39,720, [12] resigned with a separation allowance in June [13] of 1983. E.M. Sengheiser, director of [14] marketing, chemicals, and petroleum products, [15] $61,000 salary, resigned with a separation [16] allowance in June of 1983. K.W. Shupp, [17] supervisor, files, mail, and supply, $38,760 [18] salary, he resigned with a separation [19] allowance of 1983. A lawsuit originally [20] filed in a Missouri state court in 1985 led [21] to New York Dock arbitration.

[22] I'd like to go to page 38 of that

Page 140

[1] award. It should be yellowed. It's about [2] nine lines up from the bottom. A review, "A [3] review of the history of labor protection [4] conditions compels us to hold that the term [5] 'employee' was not intended to be applied in [6] a generic sense, i.e., all persons employed [7] by the railroad, but rather the term as it [8] had been hammered out on the anvil of [9] railroad legislation, rulings of the ICC, [10] court decisions, arbitral awards to mean only [11] those employees and subordinate officials who [12] are subject to unionization or who performed [13] duties that generally are described as being [14] other than administrative, managerial, [15] professional, or supervisory in nature."

[16] I'm going to refer to two of the [17] exhibits that I handed out earlier. These [18] exhibits are referred to on page 17 of [19] Mr. Grother's submission and Mr. Grother in [20] his submission quotes twice some language [21] that generates from these ICC decisions. [22] Let's go right to the case here and find

Page 141

[1] them.

[2] Union Pacific Exhibit UH47, on page [3] 9 thereof this is a ruling from 1946.

[4] "Generally speaking, railroad employees below [5] the grade of division superintendent are [6] considered to be subordinate officials or [7] employees as the case may be; however, [8] assistant superintendents, train masters, [9] chief train dispatchers under certain [10] circumstances, and others who at time and [11] exercise the authority of a division [12] superintendent are looked upon as officials."

[13] I'd like you to take that clause, [14] however, train masters who at times exercise [15] the authority of a division are looked upon [16] as officials, and file that away in your [17] memory for a moment.

[18] These three cases that we have in [19] our hands here arose in I believe '46, '47, [20] and '53, the last one being 1953, and these [21] cases are part of the ex parte number 72 [22] series of determinations that the carrier

Page 142

[1] explained in great length in its submission [2] starting with the Transportation Act of 1920 [3] and followed up with the Railway Labor Act. [4] The ICC was charged with the responsibility [5] of saying which of any nonagreement people on [6] a railroad fell into the category of [7] subordinate officials. But these cases [8] relate to representation under the Railway [9] Labor Act for union membership. They do not [10] relate to employee protection.

[11] I'd like to have you refer to Union [12] Pacific Exhibit UH48, which is the Bell v. [13] Western Maryland Railway Company, which was [14] decided 28 years after the most recent of [15] those three ex parte number 72 decisions. [16] And remember Union Pacific did not bring [17] these submissions out of the cold to [18] introduce them. They were cited in [19] Mr. Grother's employee submission and we're [20] merely responding to them.

[21] In that 1981 Bell v. Western [22] Maryland Railway on page 2 there's a quote,

Page 143

[1] again should be yellowed, "The sole issue [2] presented for our consideration in this [3] proceeding is whether petitioner is an [4] employee protected by the conditions imposed [5] in Western Maryland," and over on page 3, "We [6] are required to classify employees under this [7] act for purposes related to employee [8] representation, collective bargaining, and [9] jurisdiction of the National Mediation Board. [10] Our power to classify employees under this [11] act is limited and does not extend to the [12] classification of employees for the purpose [13] of employee protection. Accordingly, none of [14] the decisions in Ex Parte No. 72 subnumber 1 [15] relied upon by petitioner can be used to [16] support a positive determination of his [17] employee status in this proceeding."

[18] I'd like to go to page 45 on the [19] Maeser-Murphy Exhibit 26, first full [20] paragraph at the top of the page. "We find [21] in the instant case that the term

[22] 'employees,'" and that's in quotes." as used

Page 144

[1] in New York Dock excludes the [2] claimants from [2] coverage because a [3] review of their duties and [3] responsibilities reveals that they occupied [4] or held positions that are properly [5] categorized as managerial, administrative, or [6] supervisory personnel rather than rank and [7] file employees who could properly be [8] represented by a labor union."

[9] Flip the page to page 46 on the [10] bottom, starts at the last line on page 46.

[11] "We have no doubt that there were individuals [12] employed by the MP who were disadvantaged or [13] whose economic well-being adversely affected [14] by the merger of these carriers; however, [15] that is not the criteria for labor [16] protection. The rational and history of [17] these benefits are that were to be extended [18] only to rank and file employees because it [19] was believed that railroad work was so [20] specialized and limited that these employees [21] could not easily obtain work in outside [22] industry if they lost their jobs as a result

Page 145

[1] of the merger. It was also believed that [2] ranking personnel could more effectively cope [3] with the rigors resulting from the [4] consolidation of railroad facilities.

[5] "In the past 50 years of the [6] adjudication of labor protection disputes [7] there has been no court decision or [8] arbitration award with the exception of the [9] Curley award that has held that an individual [10] employed by a railroad regardless of position [11] was entitled to labor protection because his [12] job tenure or job status was disrupted or [13] adversely affected by a merger. Protection [14] has only been accorded to rank and file [15] employees and not to those individuals [16] holding positions which could be denominated [17] as executive, professional, administrative, [18] or supervisory."

[19] Page 49, two pages over, the third [20] paragraph, "We find the weight of court and [21] arbitral authority has held with the [22] exception of the Curley award on his property

Page 146

[1] that individuals holding jobs of the nature [2] and character as the claimants are not [3] employees with the purport and meaning of [4] both Article I and Article IV of New York [5] Dock."

[6] This award was rendered in 1997 by [7] Dr. Jacob Seidenberg. He was the dean of [8] railroad arbitrators. He was the number one [9] man and knew his business and he found that [10] all four were not employees within the [11] meaning and intent of Articles I and IV of [12] the New York Dock conditions. Also they had [13] been offered comparable positions in Omaha [14] and, having refused them, are neither [15] displaced nor dismissed employees.

[16] Exhibit 27, Adams, Dominick, and [17] Williamson, arose from the Guilford [18] acquisition of the Delaware & Hudson Railway, [19] 1982. John F. Adams was a district sales [20] manager in Virginia, 27,400 and change. [21] Joseph Dominick, a district sales manager in [22] Pennsylvania, 27,000 and change. James

Page 147

[1] Williamson, a district sales manager in North [2] Carolina, 26,800 and change.

[3] There had been a strike on Guilford [4] and Guilford wanted to abolish 725 agreement [5] positions. The court ordered Guilford to [6] simultaneously abolish 93 management [7] positions. Claimants' positions were [8] abolished but each was offered positions [9] which they declined to take in the marketing [10] department in North Billerica.

[11] On page 9 of that award, third [12] paragraph, "Clearly the foregoing job duties [13] and responsibilities of the claimants were [14] more akin to those of an employee than to [15] those of an official." In this case they [16] found that they were not employees under New [17] York Dock.

[18] Exhibit 28, Gerald Thomas, UP-/MP/WP [19] merger case. Gerald Thomas was a manager of [20] labor relations trainee, started in July of [21] 1985. On June 9th UP sent a letter to Thomas [22] informing him his employment in a

Page 148

[1] nonagreement position would terminate on [2] 8/30/86. On June 25 Thomas informed UP he [3] intended to participate in the involuntary [4] forced reduction program and return to his [5] former assignment as a locomotive fireman [6] represented by the United Transportation [7] Union; however, he did not accept lump sum [8] payment, he did not sign a release form and [9] on September 2, '86, he turned to work as a [10] locomotive engineer. In July 1987 he applied [11] for New York Dock benefits.

[12] Page 16 of the Thomas award, top of [13] the page, "Neither the New York Dock [14] agreement" — New York Dock's technically not [15] an agreement; it's imposed by the Surface [16] Transportation Board — but it says, "Neither [17] the New York Dock agreement nor its [18] legislative history define the meaning of the [19] term 'employee' however, Section 151-Fifth of [20] the Railway Labor Act defines those who are [21] considered employees under the act and [22] there's a quote from Section 151-Fifth which

Page 149

[1] both Mr. Grother and I put into the [2] submission.

[3] "This definition of 'employee' [4] determines who is subject to and entitled to [5] union representation. This committee [6] concludes that the New York Dock conditions [7] adopted this same definition and that the [8] section relied upon by claimant includes only [9] those employees and subordinate officials who [10] are subject and entitled to union [11] representation but for some reason are not [12] represented." The award held that Thomas was [13] not an employee entitled to protection under [14] New York Dock.

[15] The other side's going to win one [16] here. This arose on the Burlington Northern. [17] James Nekich, Exhibit 29. The Burlington [18] Northern/Santa Fe merger was approved in [19] August 1985. James Nekich was a quality [20] coordinator in the quality department. In [21] November '95 his job, in fact the entire [22] department, was abolished and Nekich returned

Page 150

[1] to his former job as a dispatcher which was [2] now in Texas instead of Minnesota where he [3] had always lived.

[4] On page 4, middle of page 4, the [5] Nekich award, item 1, as I said earlier, this [6] is an award that the individual won but we're [7] including this, if you will, to narrow down [8] and end for all discussion that "employee" [9] means something under New York Dock other [10] than what it means in Webster's dictionary. [11] The two paragraphs right under that Section [12] 1, Who is covered by the New York Committee. [13] "Although New York Dock could be read [14] literally to extend benefits to all nonunion [15] employees the reasoning and holdings of [16] subsequent decisions interpreting its terms [17] persuasively demonstrate that its coverage is [18] not so unlimited. Rather the key distinction [19] appears to be whether an unrepresented [20] railroad employee has occupied a 'labor' or a [21] 'management' position. The former would [22] qualify under the New York Dock conditions

Page 151

[1] while the latter would not. Although the [2] distinction between 'labor' and 'management' [3] is self-evident with respect to many [4] positions that is not always true. In such [5] cases as this 'it has been left to [6] arbitration the exact line to be drawn [7] between these cate-

gories.'" And then it [8] references in the matter of arbitration [9] between Gerald Huggins et al and Norfolk & [10] Western Railway, 1985, Bob Harris.

[11] This is a case where the arbitrator [12] came down on the side of the claimant but it [13] is clear she accepted the premise that the [14] distinction between labor and management [15] requires a case by case look at the facts and [16] circumstances. The award found that Nekich [17] was covered by New York Dock because his [18] position was more clearly a labor than a [19] management position.

[20] There is a second award in Nekich [21] dealing with damages but that's not relevant [22] here because the parties have agreed to

Page 152

[1] postpone discussions of damages if any.

[2] I'm going to cut myself a little [3] short on making a point here. Thirty, [4] thirty-one, and thirty-two are cases of [5] Mr. Povirk, Mr. Dixon, and Mr. Isabell. The [6] point that I'm trying to hammer in here is it [7] has been clearly established by prior [8] arbitration awards that many individuals with [9] seemingly middle management positions have [10] been determined to be officials not covered [11] by the terms of New York Dock rather than [12] subordinate officials.

[13] And Union Pacific's argument [14] basically has laid out for this arbitration [15] committee a pure path of precedent which [16] Union Pacific urges this committee to follow. [17] Secondly I told you my argument on this [18] employee issue was going to be in three [19] parts. First was the review of the awards, [20] which I'm glad you mostly stayed awake for, [21] all you people. Secondly I'm going to rebut [22] that portion of Mr. Grother's submission in

Page 153

[1] which he argues that items other than [2] previous arbitration awards should be [3] controlling.

[4] As pointed out earlier, Mr. Grother [5] rejects the notion that arbitration awards I [6] have just reviewed establish precedent this [7] committee should follow. Instead he puts [8] forth several arguments such as "statutory [9] interpretations made by the courts and [10] interpretations made by federal agencies"[11] which he claims should guide this committee [12] rather than the on-point arbitration awards. [13] Grother's goal, of course, is to paint [14] himself as being a subordinate official at [15] the time of his salary reduction. I'd like [16] to go to Grother's submission, page 16 item [17] 1. Here down at the bottom of page he's [18] contending in his point 1 that he was a [19] subordinate official under the Railway Labor [20] Act and this is where he talks about the [21] employee. He defines the Railway Labor Act [22] definition and then says the ICC has held

Page 154

[1] dozens of proceedings involving [2] classification of employees under the RLA. [3] We talked about briefly a few minutes ago, [4] the Ex Parte 72 hearings. It's Union [5] Pacific's contention that they offer nothing [6] in the way of evidence. As pointed out in [7] the Bell v. Western Maryland case, the ICC [8] itself recognizes they are only for purposes [9] of representation under the Railway Labor Act [10] and they are not for the definition of [11] "employee" under New York Dock.

[12] On page 18 of Mr. Grother's [13] submission he cites three cases arising in [14] the airline industry which he contends [15] support his position he should be considered [16] a subordinate official, not an official for [17] purposes of New York Dock. Those three cases [18] are Dorsey v United Parcel Service, [19] Podlesnick v Airborne Express, Inc., and Lum [20] v China Airline Companies, Ltd. If this [21] committee wishes to see them I have copies of [22] all three with me but these three cases can

Page 155

[1] be readily distinguished from the present [2] dispute involving Mr. Grother because each of [3] the cases involves a dispute over whether the [4] individual was considered an employee or [5] subordinate official for purposes of coverage [6] under the Railway Labor Act. Since they do [7] not involve a dispute over eligibility under [8] labor protection conditions Union Pacific [9] considers these decisions to be irrelevant to [10] the issue at hand.

[11] Also on page 18 of Mr. Grother's [12] submission he references Section 9.211 of the [13] National Mediation Board's Representation [14] Manual. I have one of those with me if [15] anybody wants to take a look at it. I didn't [16] bring a bunch of them because I figured here [17] in the home of the NMB that we could probably [18] get some more copies if we wanted them but I [19] have here if anybody would like to take a [20] look at it the current NMB Representation [21] Manual.

[22] One of the functions of the

Page 156

[1] National Mediation Board is to conduct [2] elections to determine what if any [3] organization will represent a particular [4] class and craft of employees. Management [5] employees are not eligible to vote in such an [6] election. And in Section 9.211 the NMB sets [7] forth factors which they use in determining [8] who is a management employee.

[9] This, of course, has nothing to do [10] with coverage under labor protective [11] conditions because protective conditions fall [12] under the authority of the STB, not NMB. [13] Even if Mr. Grother thinks the NMB definition [14] of a management employee is relevant to his [15] case such definition still does not support [16] his position because Union Pacific will show [17] that the NMB considers individuals [18] subordinate to Grother and who reported to [19] him at Tucson to be management employees.

[20] Note as part of Mr. Grother's [21] verified statement relating to job [22] classification he includes a copy of a

Page 157

[1] collective bargaining agreement dated October [2] 1, 1999, which page looks like this. It says [3] "Agreement between Union Pacific Railroad [4] Company and its Employees Represented by the [5] Union Pacific Union Yardmasters Council."[6] This is an agreement with a labor [7] organization, the Union Pacific Union [8] Yardmasters Council, that the NMB certified [9] as a representative for yardmasters on UP [10] system-wide as a result of an election held [11] in August of 1997. At the time of the UP/SP [12] merger yardmasters were represented by a [13] union on the former Southern Pacific and were [14] nonagreement personnel on the former Union [15] Pacific.

[16] During the 1997 election there were [17] some issues on the former Union Pacific [18] concerning who was entitled to vote. On the [19] former Southern Pacific, however, only [20] yardmasters who were represented by an [21] organization called the Western Railway [22] Supervisors Association, WRSA, voted in the

Page 158

[1] election. Managers of yard operations did [2] not vote and there was no contention on the [3] part of WRSA that they should be allowed to [4] vote. Thus, both WRSA and the NMB considered [5] MYOs to be management employees. In the [6] spring of 1997 the MYOs at Tucson reported to [7] John Grother, the senior manager of terminal [8] operations.

[9] Page 19 of his submission, if you [10] turn there just a moment, in a paragraph of [11] two lines about 60 percent of the way down [12] six lines up from point 2, it says, "It is [13] clear that employee would not qualify as a [14] management official under NMB rules." The [15] facts are just the opposite. The MYOs who [16] were subordinate to and reported to John [17] Grother were considered management

employees [18] by both the NMB and the union, the WRSA.

[19] Grother also attempts to bolster [20] his allegation he should be considered a [21] "subordinate official" for purposes of New [22] York Dock by referring to federal legislation

Page 159

[1] which provided for protection of persons [2] working for the Milwaukee Railroad, the Rock [3] Island Railroad, and by means of the Staggers [4] Act rate bureaus. His argument in this [5] regard starts on page 21 of his submission.

[6] What about Milwaukee, Rock Island, [7] and Rate Bureau issue raised by Mr. Grother [8] on pages 21 and 22 of his submission? Refer [9] to page 43 of Union Pacific Exhibit 26, the [10] arbitration case involving Maeser, Murphy, [11] Sengheiser, and Shupp. That's page 43 of 26. [12] You could put a check mark by that and read [13] it later but Arbitrator Seidenberg recognized [14] the congressional handling of the Milwaukee [15] and Rock Island shutdowns was indeed unusual. [16] He has a quote in there and that's right at [17] the bottom of my thumb, about seven lines [18] from the bottom, the last four lines of the [19] middle paragraph, "However, none of these [20] situations represent the normal circumstances [21] under which the ICC imposes labor protection [22] conditions in the usual merger situation.

Page 160

[1] That Congress became involved on the [2] Milwaukee, Rock Island, and Rate Bureau cases [3] was truly an exception." As arbitrator David [4] H. Brown points out in the Curley case, and [5] the Curley case is the one that I introduced [6] as UH49, on page 31 of the Curley decision, [7] fourth line down, the paragraph that starts, [8] "On three," "On three and only three [9] occasions the Congress of the United States [10] has definitively addressed the question of [11] what employees should be covered by [12] protective conditions imposed for the purpose [13] of minimizing the adverse effects resulting [14] from reduction of jobs in the railroad [15] industry. Actually Congress has found it [16] easier to simply exclude certain classes of [17] employees while affording broad coverage for [18] the remainder. Let us examine the [19] legislation."

[20] Arbitrator Brown then goes on to [21] discuss the Milwaukee Road Restructuring Act, [22] The Rock Island Railroad Transition and

Page 161

[1] Employee Assistance Act, and the Staggers [2] Rail Act of 1980 which dealt with rate [3] bureaus. This is now not Arbitrator Brown's [4] briefing. It's Union Pacific speaking. "The [5] fact that Congress made such a broad [6] definition of the word 'employee' for [7] purposes of protection in the Milwaukee, Rock [8] Island, and Rate Bureau legislation, [9] excluding only the top few executives from [10] coverage, should not be interpreted to mean [11] other protective conditions should be [12] similarly interpreted. These should be [13] thought of as three exceptions. The [14] protection involved was paid for with public [15] money. Such a broad definition of 'employee' [16] was not an affirmation of what already [17] existed in standard labor protective [18] conditions. Instead these three pieces of [19] legislation were recognition that these were [20] three crisis situations that were different [21] and demanded a different and broader [22] definition of the term 'employee.' After

Page 162

[1] all, if it were the opinion of those who [2] drafted the legislation that current [3] protective conditions provided such broad [4] coverage there would have been no need for [5] such a specific definition in the Milwaukee, [6] Rock Island, and Rate Bureau Staggers [7] legislation." Each of those has a specific, [8] similar, almost identical definition of [9] basically employees other than the super top [10] executives of a railroad corporation.

[11] Moving on now, in spite of his [12] earlier paragraphs in his submission in which [13] Mr. Grother downplays the significance of [14] arbitration awards, Mr. Grother cites two [15] which he contends support the notion that [16] only high-level railroad executives are [17] properly excluded from the ranks of [18] employees. The issue of these arbitration [19] awards, which held only high-level railroad [20] executives are outside the employee level for [21] Section 11326 of thus New York Dock [22] protection, on page 22 of his submission

Page 163

[1] Grother cites two cases.

[2] The first is the 1987 award by [3] Arbitrator Brown in the Curley case. True, [4] the holding in the Curley case is that with [5] the exception of only high-level executives [6] all others who receive a paycheck from a [7] railroad are considered to be employees for [8] purposes of New York Dock; however, this is a [9] rogue award which is out of line with all [10] other New York Dock Article IV arbitration [11] awards. This was recognized by other [12] arbitrators shortly after it was issued. In [13] fact in the Maeser award issued later in the [14] same year, 1987, Arbitrator Seidenberg [15] stated, as I've read earlier, "In the past 50 [16] year's history of the adjudication of labor [17] protection disputes there has been no court [18] decision or arbitration award with the [19] exception of the Curley award that has held [20] that an individual employed by a railroad [21] regardless of position was entitled to labor [22] protection because his job tenure or job

Page 164

[1] status was disrupted or adversely affected by [2] a merger."

[3] The second case cited by Grother [4] involved MIS, Management Information [5] Services, what they call IT under Union [6] Pacific, information technology. The second [7] case cited by Grother involves MIS personnel [8] on the former Southern Pacific. Various but [9] unidentified personnel had performed computer [10] work for Southern Pacific prior to that work [11] being outsourced to an IBM subsidiary called [12] ISSC. Many of the same individuals who had [13] performed such work for SP were hired by and [14] performed the same work for ISSC. These [15] SP/ISSC individuals contended the outsourcing [16] was a result of an earlier ICC decision which [17] permitted the same company which already [18] controlled the Denver & Rio Grande Western [19] Railroad to also control the Southern Pacific [20] Railroad. An arbitration decision written by [21] neutral member Friedenberger found that the [22] outsourcing was a result of the control

Page 165

[1] transaction. I have here one copy again if [2] anybody's interested in it. This is a piece [3] of history because essentially, I was going [4] to tell you, it was tossed out by the federal [5] district court in the DC Circuit.

[6] After an unsuccessful appeal to the [7] STB Southern Pacific sued the STB in the DC [8] Circuit. The arbitration award was set aside [9] by the DC Circuit. In fact Mr. Grother was [10] very kind to include that DC Circuit as an [11] exhibit. Thank you, John.

[12] The arbitration award was set aside [13] by the DC Circuit, which found that the STB [14] acted "arbitrarily and capriciously in [15] declining to set aside its finding that [16] outsourcing was causally related to merger" [17] and STB acted arbitrarily and capriciously in [18] allowing organization to refuse to identify [19] which nonunion employees it purported to [20] represent.

[21] The second citation by Mr. Grother [22] does not, as Grother contends, support the

Page 166

premise that only high-level railroad executives are outside the employee level for purposes of labor protection for two reasons. First is that the lawyer representing the individuals in that case refused to identify which persons he represented. We had no idea who these people were he was arguing for. So it is impossible to determine their level in the corporation. And secondly is that the award no longer exists because it was thrown out by the DC Circuit.

Finally, in a grand finale to his attempt to fill the air with flack Grother cites two decisions by the United States Supreme Court which deal with the definition of managerial employees under the National Labor Relations Act. Union Pacific's position is these decisions have no relevance and thus establish no precedent to the issue of labor protective conditions in the railroad industry. There are so many differences between the NLRA and the RLA in

Page 167

the manner in which they are administered rulings made under one are not neatly transferable to the other as Mr. Grother would have this committee believe.

That brings me to the third point. I told you my argument that he was not an employee for purposes under New York Dock would have three parts. The first part was a review of the arbitration award, the second part was a rebuttal of the arguments he made, and the third part is that we're going to explain why Union Pacific feels that the position occupied by Mr. Grother falls into the category of an official position now. Anybody want to take a break and get some air or should I go on?

MS. ROSS: You're on a roll.

MR. LOOMIS: Okay. That finally brings us to the point where Union Pacific will emphasize the key aspects of why the position, senior manager of terminal operations, held by Mr. Grother at the time

Page 168

of his salary reduction was that of an official, not a subordinate official.

One item this committee should note is Mr. Grother's view of what his place was in the UP organization in the spring of 1997. Between the time of his May 12, 2003, letter and his September 2004 verified statement he underwent an amazing transformation. In May of 2003 Grother wrote an extensive letter with numerous exhibits in which he contended his salary reduction was as a result of the UP/SP merger. Whatever else the reader of Mr. Grother's letter may conclude, one obvious conclusion is this is a letter written with passion and from the heart.

In May 2003 it appears Mr. Grother believed he was an outstanding player in the organization and that he, as the phrase goes, had been "done wrong." There are several portions of his letter which reflect his view of his place in the organization and his qualifications to hold a position of

Page 169

leadership. And yes, as you suspect, I'm going to review them with you.

You can use either one if you want. It's Exhibit 2 in both submissions. I'm going to go to Mr. Grother's submission E2 only. Page 1, Mr. Grother's May 12, 2003, letter to Jim Dolan, and this just reminded me it's not really relevant to what I'm saying here but I picked this up twice now, once in your submission and once in your comments earlier today. There is apparently some confusion over what I do for living or my title. Protection is part of the labor relations department at labor relations. I am the general director of employee relations planning. I work in the labor relations department. So I was not aware in your submission of why you brought up some confusion and why you brought that up again this morning. I don't think it's relevant.

But on May 12, 2003, he, Mr. Grother, wrote to Jim Dolan, the UP's

Page 170

chief lawyer, if you will, and he said that I am a Union Pacific Railroad manager. He considers himself a manager on page 1. On page 4 down near the bottom under the line where it says Grother's excellent performance background, "Grother had been a prior to merger Southern Pacific Transportation Company manager."

On page 5, slightly below the middle of the page, "Prior to his sudden demotion by UPRR Grother had been selected for many promotions, had 11 grooming moves at the request of the SPTCo, received special awards, special assignments, special project by SPTCo management for many years including an assignment by SPTCo president Mike Mohan to represent SPTCo as a lead negotiator for the purposed sale of the peninsula commute service to the public entities near San Francisco which was a $450 million transaction."

On the top of page 6, "Grother was

Page 171

highly regarded as a person who could get the job done through the creation of process management based on his Air Force fail-safe training, formal education (including an MBA), and in-depth process training at SPTCo. In fact Grother was selected by SPTCo VPO Bill Lacy to be their sole coordinator, productivity improvement program, including multiple terminal and blocking strategy studies with implementation, time lines, and detailed processes which were followed by the service units."

I believe the next cite here is on page 10, second paragraph, that starts, " The decision," the last sentence, " Therefore why punish the local manager who just happened to be there?"

Page 14, third paragraph down, " After 28 years of dedicated service, mainly as an operating department manager."

I missed a quote here on page 19. Hang on just a second. "Grother found out

Page 172

only after they took buy-outs to retire that the following two SPTCo managers had been demoted from the operating department where they managed train operations like Grother."

Page 32 down at the bottom underlined and in bold, "Regardless of the fact that Grother had performed 22 months at the same location in Tucson in the number one position at Tucson itself."

Page 33 up at the top of the page, bold, underlined, "Why did UPRR's Royce Hardin's computer-generated 'try again later' response imply that Grother was not qualified for a position that he had been the supervisor of for 22 months?"

And finally on page 6 about eight lines from the bottom four lines above the corroboration, bold and underlined, "Therefore only two months before Grother's severe demotion Grother was selected by UPRR to be its senior officer for the Tucson district, including Tucson and Nogales

Page 173

yards."

Those comments were written prior to Mr. Grother obtaining legal counsel and, Union Pacific suspects, prior to Mr. Grother becoming aware of the significance of the term "subordinate official." Now it comes to September 2004 when Mr. Grother furnishes a verified statement concerning his job classification. Miraculously he now

views [16] himself as basically an order taker whose [11] function was primarily to provide vacation [12] and other relief for the train master.

[3] Of particular interest in his new [14] found view of himself is the quotation of [15] page 1 of his verified statement, that, " At [16] all times since September 11, 1996, [17] (consummation of the UP/SP merger) and the [18] between April 16, 1997, and my displacement [19] on July 1, 1997, I have been an employee [20] within the meaning of the Railway Labor Act, [21] which I understand defines a subordinate [22] official as an employee, and I am an employee

Page 174

[1] under appropriate New York Dock conditions. [2] I do not consider myself to have been an [3] official."

[4] On page 5 of his verified statement [5] Mr. Grother summarizes by saying when his [6] title changed from terminal superintendent to [7] senior manager of terminal operations on [8] April 16, 1997, his duties became little [9] different from those of a train master.

[10] At this point I'd like to ask this [11] committee to recall from their memory that [12] comment on the ICC in Ex Parte No. 72. Now, [13] it is my position that Ex Parte No. 72 covers [14] only classification of employees for purpose [15] of representation under the Railway Labor [16] Act. But even if you do subscribe to the [17] theory that the Ex Parte 72s do have some [18] spill-over into employee protections the ICC [19] considered a train master an official.

[20] On page 7 of his verified statement [21] Mr. Grother says, "I believe I as a senior [22] manager of terminal operations would have

Page 175

[1] been eligible to join a union in as much as I [2] was at an level below 'official' under the [3] RLA; however, I had no desire to do so." [4] Union Pacific is not aware of any period in [5] the 140-plus year history of Southern Pacific [6] or Union Pacific that any labor organization [7] has ever been certified as the bargaining [8] agent to negotiate rates of pay, rules, and [9] working conditions governing terminal [10] superintendents/senior managers of terminal [11] operation or even the train masters that [12] report to them.

[13] There are several terminal [14] superintendents/senior managers of terminal [15] operations who are members of a labor [16] organization representing the rates of pay, [17] rules, and working conditions of trainmen, [18] locomotive engineers, or clerks, for example. [19] Many transportation officials are promoted [20] from the ranks of these crafts and continue [21] to pay dues to their former labor [22] organization although they are no longer

Page 176

[1] covered by that collective bargaining [2] agreement simply to retain their seniority in [3] the event they find it desirable or necessary [4] to return to the former craft. As an aside [5] here, some agreements on the former SP West [6] require the payment of dues to continue to [7] accumulate seniority, others do not.

[8] In fact the collective bargaining [9] agreement covering trainmen and locomotive [10] engineers in the Tucson area where the former [11] Southern Pacific agreements still apply today [12] provide for a leave of absence to trainmen [13] and locomotive engineers who accept an [14] official position with the company. That is [15] the purpose of the exhibit I introduced, [16] UH50. Both the UTU and the BLE recognize the [17] senior manager of terminal operations as an [18] official position with the carrier.

[19] The position held by Mr. Grother [20] was charged with the responsibility to [21] supervise the entire yard operation at [22] Tucson. As point out in Union Pacific's

Page 177

[1] submission, we estimate Tucson at that time [2] had 13 yard assignments, four road locals, [3] and employed approximately 85 persons. [4] Approximately four subordinate officers [5] reported to Mr. Grother. As we pointed out [6] in the submission, we talked with people in [7] Tucson and said give me your best guess of [8] what in Tucson six years ago. Mr. Grother [9] was furnished an automobile for his business [10] use.

[11] We talked about discipline. [12] Mr. Grother apparently did not have any [13] discipline arise when he was senior manager [14] of terminal operations, discipline for an [15] employee in the terminal, but the labor [16] agreements provide only the superintendent [17] may assess the discipline. But throughout [18] the railroad today as in then the operating [19] employees subordinate to the superintendent [20] would initiate the charges, would set up the [21] hearing. The superintendent would get [22] involved if it were a big issue but if it was

Page 178

[1] a small issue they initiated the process and [2] except for review by the division [3] superintendent 95 percent of the leg work on [4] the process was done by the people who worked [5] for the superintendent.

[6] At this point I would like to rest [7] my argument subject to rebuttal. It should [8] be very clear that Union Pacific's position [9] is that the precedent in this case is all in [10] favor of Union Pacific in that Mr. Grother in [11] his position should not be considered an [12] employee for purposes for New York Dock and [13] we urge this committee to follow that [14] precedent.

[15] **MR. MacDOUGALL:** Bring back [16] Mr. Packard to testify. But we have nothing [17] to say to that. As you say, it's argument [18] and we can answer the argument on brief. We [19] don't accept you as offering testimony as to [20] whether it was an automobile or this or that [21] or anything. In fact we'll put on [22] Mr. Grother to say actually your role. He

Page 179

[1] doesn't deal with labor relations at all. If [2] he has a complaint he deals with human [3] relations. So bring out the witness. And if [4] it's argument we'll answer your argument on [5] brief.

[6] **MR. LOOMIS:** I would like to point [7] out that item D of our agreement for this [8] arbitration committee says that at the [9] hearing the parties may be heard in person or [10] by counsel and they may present witnesses, [11] statements of fact, supporting evidence, [12] data, and argument.

[13] **MR. MacDOUGALL:** That's fine. I [14] consider argument not evidence. You're not a [15] witness.

[16] **MR. LOOMIS:** I'm a party. I'm a [17] member of this board.

[18] **MR. MacDOUGALL:** We'll argue that [19] on brief.

[20] **MS. ROSS:** So if I understand where [21] we are Union Pacific is resting on its [22] presentation of its case with respect to the

Page 180

[1] employee issue.

[2] **MR. LOOMIS:** That's correct.

[3] **MS. ROSS:** And Mr. Grother and [4] Gordon are going to answer this presentation [5] on brief.

[6] **MR. MacDOUGALL:** Except for one [7] question, his relationship to labor [8] relations. See, we're dealing with a [9] nonagreement person. He doesn't deal with [10] labor relations. Labor relations and [11] nonagreement people, like I say myself, [12] they're considered lowlifes, something [13] different. No, I'm serious. I mean, there's [14] a difference between who he reports to when [15] he has a problem with the company. If you [16] have a complaint about vacations or health [17] and welfare do you go to Mr. Loomis' [18] department or do go somewhere else?

[19] When I say that it might be helpful [20] to all of us on the board as to what the [21]

situation is for nonagreement people. Labor relations, it just doesn't have the same

Page 181

status.

MS. ROSS: Well, labor relations deals with different matters. They deal with matters that arise under collective bargaining agreements but there's an overlap. My understanding is there can be a clear overlap between labor relations, HR, and even medical departments.

MR. MacDOUGALL: Let's find out what it is on the Union Pacific.

MR. LOOMIS: I'm confused about this. I brought that up earlier. I don't understand the issue. I'm a member of the labor relations department. I report to the vice president of labor relations. I have every authority in the world to have been named the Union Pacific member of this committee. What is the issue that you're getting at?

MR. MacDOUGALL: Well, when you say Union Pacific says this and that you're talking about features which are not

Page 182

generally in your expertise. That's what I'm saying, that Grother's problems with management if he has any do not go to labor relations. Then deal with it. I'll have to ask him. We haven't gone over it.

MR. LOOMIS: Why is that relevant?

MR. MacDOUGALL: Well, this is relevant because you were giving argument which you're intending to say is evidence, like, for instance, he has an automobile, this and that and so forth as examples. And you're just not his line of command. He's a nonagreement person.

Can I ask him a question?

MS. ROSS: Sure.

MR. GROTHER: Mr. Grother —

MS. ROSS: Let's wait for Mr. Loomis to finish reading. Who under New York Dock conditions can be a member of the arbitration committee? Is that what you're trying to get?

MR. MacDOUGALL: No, no. I'm just

Page 183

going to ask him questions about his relationship with labor relations or who else.

MS. ROSS: I think the gist of this is that if Mr. Grother has questions in performing his functions he doesn't go to labor relations? Is that correct?

MR. MacDOUGALL: Well, ask him.

MS. ROSS: Well, let's just say this. Is there a question at this point with respect to Mr. Loomis' ability to be on this board?

MR. MacDOUGALL: The members are willing to be on the board.

MS. ROSS: No one's challenging his role as a board member?

MR. MacDOUGALL: No.

MS. ROSS: The answer is no.

MR. MacDOUGALL: It's just when he talks facts I might want to ask Mr. Grother.

DIRECT EXAMINATION CONTINUED

Page 184

BY MR. MacDOUGALL:

Q: If you have a problem with any of your dealings with Union Pacific regarding to rates of pay, rules, working conditions, health, or whatever it is, who do you go to? Do you go to labor relations or who, executive branch?

A: No, we would normally go to human relations for most questions. But there might be an occasion where we go to labor relations.

Q: What would that be?

A: Well, if you have specific agreement question, how to interpret the agreement.

Q: Is it —

A: I'm talking 1997 now. I'm trying to confine my answers to that time frame because that's what's relevant here, not what happened in 1969 when I was turned out or not what I did in between or what actually went on in 1997. That's what's relevant.

Page 185

Q: Let's say you had problems with the train crews or something. You would then go to labor relations. Is that what you're saying?

A: If there was an agreement issue only.

Q: Now, say there's an agreement between yourself, John Grother, and Union Pacific regarding vacations or pay raises or what?

A: That would be HR. I would go to HR on that.

MS. ROSS: I understand the distinction.

BY MR. MacDOUGALL:

Q: Do you ever go to the executive branch?

A: I have written the executive branch about the issue of fairness in this case and been rebuffed on the executive branch, yes.

MS. ROSS: By that you mean Mr. Dolan?

Page 186

THE WITNESS: No, I went to Mr. Davidson, the chairman.

MS. ROSS: Mr. Davidson, I'm sorry.

THE WITNESS: Mr. Davidson, the chairman of the board, and asked him as a matter of fairness would he reconsider this issue and I got a nonresponse.

BY MR. MacDOUGALL:

Q: Is the ombudsman part of the labor relations department or some other department?

A: To my knowledge it's part of the executive department.

Q: So it's your testimony the ombudsman doesn't report to labor relations?

A: Not to my knowledge, no.

MR. MacDOUGALL: I'm done.

MS. ROSS: We can keep moving here. Is that all —

MR. MacDOUGALL: We're through. Our argument will be on our submissions and on brief.

Page 187

MS. ROSS: Did you want to respond to their response on your employee presentation?

MR. LOOMIS: I didn't hear any response to my employee protections.

MS. ROSS: Well, they had the floor after your presentation. Did you —

MR. LOOMIS: I feel that the distinction between the fact that Mr. Grother's issues on vacation and rates of pay are handled by human resources and a trainman in Tucson his issues on rates of pay or working conditions are handled by labor relations bolsters our argument there's a difference between labor and management and he's on the management side of the game.

MS. ROSS: Would you like to take a break before we move into the final?

MR. LOOMIS: Yes.

(Recess)

MR. LOOMIS: Ready?

MS. ROSS: I'm ready.

Page 188

MR. LOOMIS: The last portion of Union Pacific's argument today concerns contention that Mr. Grother's claim should be barred under the doctrine of laches because of its long delay in being furnished, prejudices the carrier's ability to defend itself. We understand there are no cut and dried

time limits in New York Dock as there [9] are in a lot of processes under Railway Labor [10] Act. Of course, New York Dock is not under [11] the Railroad Labor Act; therefore, it's a [12] separate matter but I would like to review [13] with you and I will do it fairly briefly.

[14] We put in four arbitration cases [15] dealing with New York Dock and laches, cases [16] number 36, 37, 38, and 39. In the interest [17] of expediency rather than walk you through [18] all of the various facts and issues involved [19] in those cases I would point out that the [20] first one, Exhibit 36, Shankel, Porter, and [21] Chapman, was a delay of 39 months. The [22] arbitration board found that was unreasonable

Page 189

[1] delay and dismissed the case on that basis.

[2] The next one, Exhibit 37, Haber and [3] Galbraith (?), was a 36-month delay and [4] that case the arbitrator determined the claim [5] was barred by laches.

[6] The third case, Tefft, was a 33- [7] month delay and the board held that the [8] claimant had waited too long. And the last [9] case we have cited, Sysak, actually was the [10] attorney representing some claimants, not the [11] claimant. That was a delay of 12 months and [12] the board in that case held that was not too [13] long a delay.

[14] So, just looking at the New York [15] Dock issues that are laches issues that we [16] could find, we found one that was 39 months. [17] It was held to be too long, one that was 36 [18] months too long, 33 months too long, and 12 [19] months not too long and we think that the 70 [20] months that Mr. Grother waited to contend [21] that he was due benefits under New York Dock [22] was such a long time that Union Pacific is

Page 190

[1] prejudiced in its ability to defend itself.

Several of the players involved, [3] Dennis Tolan, Brad King, Art Schoener, have [4] left the company. A lot of the data as to [5] what was going on in Tucson, and I recognize [6] that Mr. Grother contends he has a box full [7] of information in his garage, but that's not [8] available and we feel we're being asked to [9] defend ourselves in essence with one arm tied [10] behind our back as far as being able to get [11] relevant information from a period six years [12] ago.

[13] Now, I note that Mr. Grother [14] somewhere earlier today, I believe in [15] testimony in relation to GH28 when we got [16] down near the end —

[17] MS. ROSS: Page 12 starts the [18] sketches.

[19] MR. LOOMIS: There was a comment on [20] laches. Oh, thank you very much.

[21] MS. ROSS: Number 25.

[22] MR. LOOMIS: He cites comments from

Page 191

[1] page 33 of the Union Pacific submission where [2] we say that Mr. Grother's demotion was [3] effective July 1, '97, and he first notified [4] Union Pacific of his position that a dispute [5] existed under New York Dock by letter dated [6] May 12, 2003, and his response is that his [7] first written notification that a dispute [8] exists was on July 15, 1997. And he says, [9] "To be sure, my dispute was not labeled New [10] York Dock but that label is unimportant. UP [11] was well aware a dispute existed over my [12] claim; moreover, other claims arose out of my [13] displacement under other federal provisions [14] well before May 12, 2003."

[15] We do not dispute the fact that [16] Mr. Grother has made other and earlier [17] complaints but that unless there's something [18] that we have not been shown Union Pacific had [19] absolutely no idea that Mr. Grother was [20] progressing a claim under the New York Dock [21] employee protective conditions until he wrote [22] to Jim Dolan, the head of our law department,

Page 192

[1] on May 12, 2003, and that was 70-plus months [2] after he was initially affected.

[3] And there was a couple documents [4] that we put into our submission. One of them [5] relates to coding on a form. I'll have to [6] look and see what that is. I don't remember [7] the number. One of them is a form called [8] Exhibit 40, if you will, and I know you know [9] the number of this but you're not telling me, [10] aren't you? One fifty-one twenty-one.

[11] If you refer to Union Pacific [12] Exhibit 40 we have sincerely tried, talked to [13] several people, to dig up information [14] relating to this and this form here this is [15] all that we can find and we have completely [16] changed from what we used to pins to a [17] people-soft employee database keeping of [18] records. This form on page 2 is a NAPs form, [19] a nonagreement position. This is a payroll [20] authority for nonagreement positions. John, [21] this is what you would remember as a 21-20 [22] under SP terminology. This is the authority,

Page 193

[1] if you will, to make payroll changes for a [2] nonagreement person and it shows that his [3] monthly salary was being reduced from 6,200 [4] to 4,928, it shows proposed action to be a [5] demotion, and it shows down in comments, see [6] comment section at 151-21 system for [7] justification of demotion.

[8] We cannot find that form. We have [9] no reason to believe that it still exists [10] from six years ago. But down in the shaded [11] part on document history it does indicate [12] that at 12:57, a little before 1:00 p.m., a [13] status date on June 27, 1997, this form was [14] created and the initial approval was Brad [15] King, the vice president of transportation, [16] and the second approval was Art Schoener, the [17] executive vice president of operations. [18] Those gentlemen have both left the company. [19] They're no longer employed with Union [20] Pacific.

[21] So that's just one example, if you [22] will, of not being able to go back and dig

Page 194

[1] out what we would like to dig out so that we [2] could have had stuff that we could have [3] wrapped our hands around and made part of the [4] record if this claim had been filed in a [5] timely manner; therefore, it would be our [6] request that this committee find that this [7] claim is barred under the doctrine of laches [8] because he simply waited too long to make his [9] initial allegation he was covered by New York [10] Dock.

[11] MS. ROSS: Response?

[12] MR. MacDOUGALL: Yes, I think [13] Mr. Grother would like to testify about this [14] Form 151-21, which is the only basis we've [15] seen so far for any so-called laches, [16] inability of the company to prepare its [17] defense. It appears at the same time as the [18] displacement to Houston, the same thing, and [19] the person to ask about that would have been [20] if the carrier was really interested was [21] Mr. Packard when he was here. After all, I [22] think the day before was the date that

Page 195

[1] Mr. Grother was told to go to Houston. So, I [2] mean, it's obviously part of the same [3] transaction.

[4] DIRECT EXAMINATION CONTINUED

[5] BY MR. MacDOUGALL:

[6] Q: I'd like to ask Mr. Grother to [7] explain what investigation you made on that [8] and what you think it's all about.

[9] A: Referring again to Exhibit 40, [10] which we were just looking at, in the middle [11] of that page the same comment section, my [12] understanding of this document is that there [13] was a page 2 which Mr. Packard or my [14] supervisor, whoever that might be, whoever [15] stood up and said they were my supervisor, I [16] say he still supervisor because [17] McDowell ran the operation, as he testified. [18] At any rate someone had the audacity to put [19] on

this form, as you'll see it right here [20] under column disciplinary action, just [21] reached up and grabbed it out of the sky and [22] threw it down there and said this is why this

Page 196

[1] man's been demoted, disciplinary action. No [2] basis for it. The carrier has ever come [3] forward and said anything about that. They [4] wouldn't even tell me if it's been removed. [5] I don't even to this day know that that's [6] been removed from my record.

[7] In addition, my other research on [8] this issue, after I finally did dare to go [9] into researching what was going on with my [10] record after, you know, waiting until age 55 [11] and patiently waiting for the time when I was [12] 55 so I can have some insurance help for my [13] wife because these folks might fire me [14] immediately, the only reason I'm here today [15] is because I have a age discrimination [16] action. That's off to the side but at any [17] rate the situation here is, and I refer you [18] to Union Pacific Exhibit 2 page 90, is [19] another example of what is going on behind [20] the scenes.

[21] Finally after a year of researching [22] this with Union Pacific after I dared come

Page 197

[1] forward in November after my birthday, [2] November 2001, I started coming forward [3] asking for my personal record. I finally got [4] a hold of Miss Lisa Brewster and I wrote to [5] her. And that's my standard capitalized [6] method back in that period. And her answers [7] are in lower case or proper case, we should [8] say.

[9] **Q:** Identify that exhibit.

[10] **A:** I'm looking at Exhibit 23A of Union [11] Pacific Exhibit 2, page 90 of their [12] submission. In my submission it would be the [13] same thing. A little easier to work with.

[14] **MS. ROSS:** Yes, because I had [15] yours. I couldn't carry at all. Okay, 23A [16] on there.

[17] **THE WITNESS:** Toward the middle [18] there underneath number 2, the second [19] paragraph of number 2 I ask her a question [20] about this disciplinary business and she said [21] not only is it on this document, this [22] demotion document, but it's also being

Page 198

[1] carried on my online personal record. You [2] can see there the underlined portion where [3] she responds there the online record [4] indicates disciplinary action. So during all [5] those intervening years between 1997 and 2002 [6] this record was being carried on my online [7] personal record which I have no access to [8] telling everybody in the world who promotes [9] this guy is a discipline problem. It wasn't [10] enough to take all of my money away and kill [11] my pension. They had to go and do this [12] behind my back. It wasn't enough to do that. [13] They had to go ahead and put this on my [14] record behind my back.

[15] **BY MR. MacDOUGALL:**

[16] **Q:** Do you think it's any different set [17] of circumstances described by Mr. Packard [18] today, any other event going on at that time [19] that would cause that?

[20] **A:** To my knowledge there is no reason [21] why that would have been put on there except [22] for just to get even for me writing to the

Page 199

[1] president — all I guess is I wrote to [2] President Davidson at time asking for a fair [3] review of the issue and saying it's not my [4] performance. That's what I said to him and I [5] still believe that. And I said it has [6] nothing to do with me. They just had an [7] experiment. It failed and I was scapegoated.

[8] But the whole thing was a merger [9] experiment that they decided to do that. [10] They had the rights to do it when they took [11] over. They gave the right to make [12] operational decisions. They made that [13] operational decision. It came back home. [14] The culture in 1997 was to shoot the guy. [15] There was a titular head. I was a titular [16] head taken out back and shot.

[17] Four days notice, you're on the [18] street or go to Houston. They knew I had a [19] sick wife. They knew that's the only choice [20] I had was to stay.

[21] **Q:** Were there any other events going [22] on at that time back in '97 that would cause

Page 200

[1] that thing to be entered as of the day you [2] were transferred to Houston?

[3] **A:** There's no reason or rhyme that [4] should have been put on my record and they [5] won't even answer the question today if [6] that's been removed from my PR or not. They [7] still will not answer that question. But it [8] has certainly affected my ability to get any [9] kind of job. I can't even get an interview [10] with this company. I have no skill [11] transferability with this company. I cannot [12] get a job other than what I have with this [13] company. I have repeatedly tried for the [14] last six years. That's another form of [15] retaliation that is active by this carrier.

[16] **Q:** Was that discipline thing ever [17] shown to you?

[18] **A:** I was not aware of this until July [19] of 2002. After a year of research I finally [20] came across somebody who would tell me the [21] truth.

[22] **Q:** Did you ask Mr. Packard about it?

Page 201

[1] **A:** Yes, I wrote to Mr. Packard six [2] times. Mr. Packard —

[3] **Q:** On this particular discipline [4] thing?

[5] **A:** Yes. I wrote Mr. Packard six [6] different times and asked him —

[7] **Q:** Is that in the record here [8] somewhere?

[9] **A:** Yeah, it's on the record.

[10] **Q:** What exhibit?

[11] **A:** I wrote to him six different times [12] and asked him why that was put on there and [13] he would not answer any of my correspondence. [14] It says right here in the UP policy in '97 in [15] most cases the employee's present salary [16] level is retained. And now nobody can [17] remember — that's Exhibit No. 14 of the [18] Dolan letter, Exhibit 2. It says —

[19] **Q:** A request to Packard?

[20] **A:** Right and the money is left alone [21] but, being an SP guy, they had to go in there [22] and take a whack at me that was considerable.

Page 202

[1] **Q:** Find the Packard thing if you can?

[2] **A:** Let me see if I can find it. Here [3] it is, right here, Exhibit 49, UP, page 134. [4] My exhibit 49. This is a sixth attempt to [5] write you, it basically said. It was a [6] certified letter as noted by the last page. [7] And in there I ask him also about the [8] discipline issue.

[9] **Q:** That's page 3 of that, right?

[10] **A:** Right.

[11] **Q:** Page 3 of your Exhibit 49 and your [12] Exhibit E2?

[13] **A:** Right. I asked him on page 3 of [14] that. I said it appears that over these last [15] 5.5 years every attempt I made to get [16] promoted had been rejected because I have [17] this unknown to me disciplinary action entry [18] in the online system which is a very quick [19] way for hiring managers to reject someone for [20] promotion consideration.

[21] So it wasn't enough to, you know, [22] take an SP person and cut to almost 45

Page 203

[1] percent of their wages. They had to put a [2] stinger tail, a hidden record, on there to do [3] more devastation to my life.

[4] **Q:** Did Packard ever answer your letter [5] to him inquiring about this discipline thing?

A: No, he never would answer those letters. That was the sixth one.

MR. MacDOUGALL: Have you finished the —

MR. LOOMIS: Well, I finished my primary. I'm going to make a few rebuttal comments when you're finished with your rebuttal, yes.

MR. MacDOUGALL: The only other thing we say, we submitted Mr. Grother's reply, verified statement. We discussed in his reply the laches issue. He's testified now about it. The only claim mentioned here in the hearing by Mr. Loomis is in this disciplinary record. So we have nothing further to say. We've answered the only thing they've raised here.

Page 204

MR. LOOMIS: I can try to call Mr. Packard and see if we can get him back if you would like.

MS. ROSS: Would you like Mr. Packard here to —

MR. MacDOUGALL: It's up to them.

MR. LOOMIS: I've got his cell phone number. I'd be willing to give him a call to see if I can get him.

MR. MacDOUGALL: It's up to you.

MS. ROSS: We'll go off the record.

(Recess)

MR. MacDOUGALL: The people that were immediate supervisors of Mr. Grother are all on the railroad still, Mr. McDowell, Mr. Packard, Mr. Murphy, all those people. We're very suspect on that discipline thing. It occurred the same day that he was sent to Houston so if we had the person here. We tried six letters to find out what it is and we think it's fictitious. Certainly it's rather doubtful when it comes to being

Page 205

momentous.

MR. LOOMIS: We have had some discussion. I cannot answer the mystery, if you will, surrounding the notation on that form, Exhibit 40 I believe it was, of the discipline being the reason for the demotion. I won't even make a guess. I don't know why it's there.

(Interruption)

MS. ROSS: Mr. Loomis is explaining the existence of the discipline notation on the record.

MR. LOOMIS: I'm doing that and then making a few rebuttal comments on the argument here. I have talked to some people. I cannot explain the disciplinary action comment on page of Union Pacific Exhibit 40. I don't even want to guess about it. I really can't offer an insight into that.

I would note here for what it's worth that this E23A, which is also on page 90 of Union Pacific Exhibit 2, that

Page 206

Mr. Grother brought to our attention his delay dated in July of 2002. That is still five years plus down the line from the date that he was demoted or had a salary reduction. I also note, just because it was pointed to me here, that the first line says that my director supervisor was Mr. Ken C. Packard.

There was a couple of comments that were made here about Mr. Grother can't get another job within the company. My understanding is this arbitration concerns solely the salary reduction and transfer on or about July 1, '97, and that subsequent failures to get jobs are being pursued by Mr. Grother in other forums and are not part of this record here today.

MS. ROSS: So noted.

MR. LOOMIS: So we'll call Mr. Packard back and we'll see what he can tell us. I have talked with Mr. Packard about some of the items that you asked but I

Page 207

would rather wait to have you hear it directly from him about his lack of response to your attempts to contact him.

MS. ROSS: Let's go off the record.

(Recess)

MR. LOOMIS: The Grother committee has requested that Mr. Packard come back and Mr. Packard is back. I just wanted to point out that following our conference call, Exhibit UH44, we had said during the conference call that Mr. Packard's role here would be into the job classification and a little of the employee but we said it wouldn't have anything to do with laches. So just let the record show that it was the Grother side, not us, that called him back and ask him to make comments on this laches issue.

MR. GROTHER: Wait a minute. We did not request him to come back here. You requested him to come back. We did not ask for Packard to be recalled for laches. We

Page 208

said that the only new thing on laches was this discipline thing which you raised. We said that Packard had been here and you could have asked him that question.

MR. LOOMIS: As long as you have no problems with Mr. Packard being here and aren't going to object to him coming back I don't care how you stipulate it.

MR. MacDOUGALL: I don't care about him coming back but it's not us that asked him to be recalled. You are recalling him. You are bringing him back.

MR. LOOMIS: I'm sorry. I thought I was doing it at your behest.

MS. ROSS: I construed the situation as an offer to bring Mr. Packard back to try to develop a full record and address some of John's concerns about the discipline notation and the no response to the six letters and I think if we're here to get to the facts let's just do that.

MR. LOOMIS: This is the document,

Page 209

primarily this comment down here, and then also —

MS. ROSS: The document is No. 40.

MR. LOOMIS: UP40 and also what did we call it? What was your certified letter, John?

MR. GROTHER: Forty-nine.

MR. LOOMIS: Your 49?

MR. GROTHER: Page 134.

MR. LOOMIS: Page 134 and then also they brought up this letter here that John sent to you, and they have some questions they'd like to ask you about those issues.

MR. PACKARD: Okay.

MR. MacDOUGALL: We have no questions to ask him except why didn't you answer the letter. That's a simple question.

MR. LOOMIS: A question there.

MR. MacDOUGALL: As the discipline thing, you're the one that raised it. We did not raise the discipline thing. You raised it, the last thing.

Page 210

MR. LOOMIS: I agree we're trying to get to the bottom. Let's not worry about who did what.

DIRECT EXAMINATION CONTINUED

BY MR. LOOMIS:

Q: Ken, can you tell us if you ever seen this letter before, if you ever got multiple communications from Mr. Grother, if you ever answered and of them, and if not why not?

A: Okay, no, I haven't seen this letter because I never opened the envelope, quite honestly. I didn't sign for the certified letter. It went to the mail room at Union Pacific. It did end up finally over at my location. But I had previously received a Lotus note from John and it was a rather lengthy

Lotus note about having a [19] near-death experience and so on and so forth. [20] Before he goes on, I guess, he wanted some [21] questions answered and my reaction was, John, [22] you need to get past this and I don't think

Page 211

[1] I'm going to respond to this. It can go [2] nowhere. And so I did not respond to his [3] letter.

[4] **MR. MacDOUGALL:** Another thing that [5] was raised by Mr. Loomis was the discipline [6] thing and what knowledge you had as to how [7] that got —

[8] **MR. PACKARD:** I have no knowledge [9] how that got entered. John was not [10] disciplined. It was not a disciplinary [11] action. I mean, I —

[12] **MR. MacDOUGALL:** But the report is [13] in —

[14] **MR. PACKARD:** I've never actually [15] seen, you know, seen the document. I did [16] hear that that notation was made on a record [17] but it's not correct.

[18] **MR. MacDOUGALL:** It's not correct [19] that that's been said?

[20] **MR. PACKARD:** It's not correct. [21] John was — it was not disciplinary.

Page 212

[1] **BY MR. LOOMIS:**

[2] **Q:** That's this comment here?

[3] **A:** Right.

[4] **MR. MacDOUGALL:** Did you write on [5] this one? Did you write anything on this [6] one, the 151-21?

[7] **MR. PACKARD:** No, I'm not familiar [8] with the form at all.

[9] **BY MR. LOOMIS:**

[10] **Q:** I believe you testified earlier you [11] came back from Denver to Tucson with Tom [12] Murphy and at that time this process was in [13] motion?

[14] **A:** The arrangements for his transfer [15] were in motion.

[16] **MR. MacDOUGALL:** When was this, a [17] day or two before the end of June? Murphy [18] and you spoke to him? If you recall.

[19] **MR. PACKARD:** June-July.

[20] **MR. MacDOUGALL:** That's pretty [21] close.

[22] **MR. PACKARD:** I'm not exactly sure

Page 213

[1] of the date.

[2] **MR. MacDOUGALL:** Was it fairly [3] close to his termination at Tucson?

[4] **MR. PACKARD:** Yes, it was the same [5] day, yes.

[6] **BY MR. LOOMIS:**

[7] **Q:** So it very well could have been on [8] or about the 27th of June when this form was [9] processed by someone in Omaha?

[10] **MR. MacDOUGALL:** What are you [11] referring to? Is he referring to Exhibit 40 [12] still?

[13] **MR. LOOMIS:** Referring to Union [14] Pacific Exhibit 40. I'm trying to help get [15] an answer to your question as to the date [16] that he came back to Tucson from Denver with [17] Mr. Murphy and he said it was on the same day [18] that he told John about the demotion and this [19] form makes reference to events being entered [20] on June 27, 1997, which was four days prior [21] to the effect date of John's demotion, and [22] therefore I was using this maybe to prompt

Page 214

[1] his memory.

[2] **BY MR. LOOMIS:**

[3] **Q:** Was it on or about this date that [4] you came back from Denver with Murphy?

[5] **A:** It was in that time period. I [6] don't know the exact day.

[7] **MR. LOOMIS:** Good enough. Do you [8] have any other questions for Mr. Packard?

[9] **MR. MacDOUGALL:** I don't have any [10] questions.

[11] **MR. LOOMIS:** Glad I'm not paying [12] you by the hour.

[13] **MS. ROSS:** Have both parties and [14] members completed their questioning and case [15] presentation?

[16] **MR. LOOMIS:** I have a brief summary [17] statement, truly brief, but I've completed my [18] presentations and rebuttals, yes.

[19] **MS. ROSS:** Do you have a closing [20] statement?

[21] **MR. MacDOUGALL:** No, we'll do it on [22] brief.

Page 215

[1] **MS. ROSS:** Let's allow Bill to make [2] his summary statement if he wishes.

[3] **MR. LOOMIS:** Well, I would sum this [4] case up and this has been, as you can tell [5] from the record, a very voluminous case. A [6] lot of people put a lot of work into this [7] case. And the carrier or Union Pacific [8] believes that the case should be dismissed [9] for laches, that Mr. Grother's salary [10] reduction and transfer was not as a result of [11] a merger transaction, and, most sincerely, [12] that Mr. Grother should not be considered an [13] employee under the New York Dock protection [14] conditions.

[15] We believe we've set out a large [16] amount of evidence in that regard. We feel [17] we have refuted some if not all of the items [18] in Mr. Grother's submission regarding his [19] position that he was a subordinate official [20] as that term is used officially and that he [21] was in fact an official.

[22] We feel that the record in this

Page 216

[1] case indicates that neither the facts nor the [2] law are on Grother's side, that typically if [3] a lawyer has the facts on their side they [4] will argue the facts, if they have the law [5] they'll argue the law, but in this case we [6] think they've merely argued.

[7] And secondly, I feel as a [8] representative of Union Pacific that this [9] case needs closure. It's been out there now [10] for seven years. It needs to be brought to [11] an end so that John can have closure on it [12] and get back to pursuing other aspects of his [13] life. But I guess I would say that to Union [14] Pacific this case coming as late as it did, [15] and this is just one action, that we view [16] this as a case of a person whose career has [17] not turned out as great as they had hoped and [18] he is now approaching retirement age and he's [19] looking for a source to tank up on some cash [20] before he retires.

[21] With those comments and our earlier [22] presentation we urge you to find that

Page 217

[1] Mr. Grother is not entitled to any benefits [2] under the New York Dock protective [3] conditions.

[4] **MR. MacDOUGALL:** We have nothing [5] really to say except I regret that Mr. Loomis [6] takes this personally. It's part of the old [7] SP/UP thing. I don't know. It's not a [8] personal thing. We thing the issues are [9] clear on causality and laches for us, very [10] clear. The only thing that's a legal issue [11] is the question of the term "employee" and we [12] intend to brief that. We notice that [13] Ms. Ahart used the employee definition in her [14] letter under the RLA as well as the New York [15] Dock and we'll develop that middle issue [16] further on brief.

[17] I think the first and the last [18] issues are very clear that this is the result [19] of a merger and that laches doesn't apply [20] here. I think the only issue is the employee [21] thing and we think we'll prevail on that.

[22] **MS. ROSS:** I would like to move

Page 218

[1] into the record this document today notifying [2] us for the purpose of this hearing or until [3] further notice that Mr. MacDougall is the [4] Grother member of the panel. And however we [5] want to designate this we could designate [6] this

since you've tendered it —

MR. MacDOUGALL: End exhibit.

MS. ROSS: End exhibit? Call it —

MR. MacDOUGALL: We can have an R exhibit.

MS. ROSS: Let's call this the last GH exhibit. What would that be? Did we leave off at 28?

MR. LOOMIS: I believe we went to 28.

MS. ROSS: So this will be GH29. Do you need a copy of this?

(Exhibit No. GH29 was marked for identification and received in evidence.)

MS. ROSS: And then the last thing, the final housekeeping item would be our date

Page 219

certain for post-hearing briefs, which would be the final close of the record. Right now we have briefs set for October 31st because we're obviously going to have a transcript prepared and mailed out and I expect it will be at least 200-250 pages long. It's going to require some review. So what's your pleasure on —

MR. MacDOUGALL: The hearing closes when the transcript is received by the members or at least the neutral. That's the date whenever that date comes. I understand there's an estimate of 10 days, but you never know. I don't know whether even 20 days is enough after. It's up to you.

MR. LOOMIS: If you want to extend that into the future because of the transcript Union Pacific has no objection. We would like, however, you to extend it to a date certain rather than so many days after the transcript.

MS. ROSS: I agree just for my

Page 220

purposes as well.

MR. LOOMIS: Pick a date.

MS. ROSS: I think the decision date due was going to be November 25th. Do we want to make November 25th the —

MR. MacDOUGALL: I would say 45 days would be the briefs are filed. That's the end of it. Do we want to make November 25th the date for the reply briefs?

MR. LOOMIS: November 25th I believe is Thanksgiving.

MS. ROSS: That's not good. That's when my award was due.

MR. LOOMIS: Well, if we extend the reply briefs we extend the award.

MS. ROSS: Oh, I know. I'm just saying I didn't realize we set that date for Thanksgiving and I'll be in Texas.

MR. MacDOUGALL: I would think the 45 days runs from the filing of the briefs.

MS. ROSS: No, the 45 days ran from the close of the hearing.

Page 221

MR. MacDOUGALL: Using the brief as the finish of the hearing, that's what I'm saying.

MS. ROSS: It's not material, because we're going to extend everything out.

MR. LOOMIS: That's why we did the 45, if you remember, because we had the 20 in there.

MR. MacDOUGALL: Well, I think it's in the New York Dock, the 45 days.

MR. LOOMIS: I would say for post-hearing briefs, you pick a date. You just pick a date and tell me whether a mail to or a have to you by date.

MS. ROSS: Let's go off the record.

(Recess)

MS. ROSS: We're back on the record. It is 4:45 or so. In our off the record discussion the parties agreed that briefs will be in the mail by November 15, 2004, with the decision due by the neutral member no later than December 31, 2004. That

Page 222

concludes our hearing and I just appreciate everybody conducting a professional hearing and thank you.

(Whereupon, at 4:45 p.m., the PROCEEDINGS were adjourned.)