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May 10, 2005

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, NW
Washington, DC 20006

RE: STB Finance Docket No. 32760 - *Sub B - No. 44*
In the Matter of the New York Dock Arbitration
Between Union Pacific Railroad Company and
Brotherhood of Locomotive Engineers and Trainmen

Dear Mr. Williams:

Enclosed for filing in the above-entitled proceeding are the original and ten (10) copies of Petitioner's Motion to Stay the Decision of the New York Dock Arbitrator. The original signed Declaration of Charles R. Rightnowar is being sent separately, but a copy of such Declaration is attached in the original motion as well as the ten copies.

Very truly yours,



Carol Nguyen
Attorneys for Petitioner,
Brotherhood of Locomotive Engineers
and Trainmen.

CC: A. Terry Olin w/enclosures

ENTERED
Office of Proceedings
MAY 11 2005
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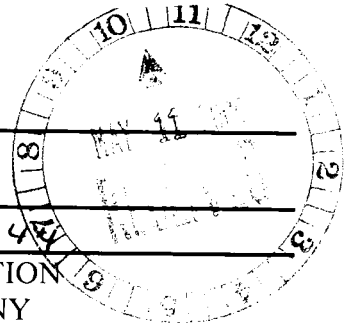
EXPEDITED HANDLING REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 *SUB. NO. 48*

IN THE MATTER OF NEW YORK DOCK ARBITRATION
BETWEEN UNION PACIFIC RAILROAD COMPANY
AND

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
(ARBITRATION REVIEW)



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Office of Proceedings

MAY 11 2005

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Public Record**

PETITIONER'S MOTION TO STAY
THE DECISION OF NEW YORK DOCK ARBITRATOR

The Brotherhood of Locomotive Engineers and Trainmen ("BLET"), which filed the above-captioned appeal herein on Monday, May 2, 2005, respectfully requests that the Surface Transportation Board ("STB") issue an immediate and emergency stay of the Arbitration Award by the New York Dock Board of Arbitration, Dr. James R. McDonnell, Chairman, issued on April 14, 2005 and attached hereto and further stay any and all action by the carrier Union Pacific ("UP") to revoke the reverse lodging arrangements and other benefits for the engineers at Dexter, Missouri, until there can be a ruling on the merits by the New York Dock Board of Arbitration as the BLET's claim that the reverse lodging arrangement and other benefits are protected for the working lifetime subject to the attrition process of the engineers pursuant to the October 18, 1999 amendment to Side Letter Number 11 of the St Louis Hub Merger Implementing Agreement.

The BLET is entitled to a ruling on the merits by a New York Dock Board of Arbitration and (1) is likely to succeed on the merits of the appeal filed on May 2, 2005, and (2) will suffer irreparable injury if the carrier does not maintain the status quo during the pendency of this appeal. Furthermore, as set forth below, the stay is in the public interest and is vital to the goals of the New York Dock Conditions and of federal labor

policy. In support of this request for an immediate stay, the BLET has attached certain correspondence between the Carrier and the Organization and further states as follows:

1. The BLET filed a claim for arbitration with the New York Dock Board of Arbitration that under amended Side Letter Number 11 of the St. Louis Hub Agreement the engineers at Dexter, Missouri are entitled to, on a lifetime attrition basis, payment of reverse lodging and reverse held-away-from-home-terminal (“HAHT”) payment when they work out of Dexter, Missouri to locations such as but not limited to Salem and St. Louis and that the Carrier may not revoke these important fringe benefits which are incorporated in the St. Louis Hub Agreement by the amended Side Letter.
2. The BLET contends that under amended Side Letter 11 these rights of reverse lodging and HAHT payments have been and are important fringe benefits that must be preserved. These rights are protected both as a result of amended Side Letter Number 11 and as an important fringe benefit which should be appropriately protected and preserved under section 11326 of the ICC Termination Act. That is, the right sought to be preserved by the BLET is both a right under the Hub Agreement and under federal law and clearly a right that is appropriately protected under the New York Dock Conditions.
3. The BLET contends that the letter of understanding dated October 18, 1999 amended Side Letter Number 11 so that the reverse lodging and reverse HAHT benefits for the engineers who work at Dexter would last for the lifetime of each engineer based on an attrition basis. As set forth in the attached documents, by letter of April 4, 2005, the Carrier now has given notice that it will revoke the rights of these engineers despite the protection of the amended Side Letter Number 11. The Carrier will now make Dexter an “away from home terminal” and as a result, fewer positions will be available at Dexter.

Therefore the most senior engineers will have the option to bump other engineers at Dexter or be forced to relocate at other terminals. This will lead to a cascade of engineers exercising their bumping rights and moving their homes and families to new terminals. All of this relocation flows from the refusal of the New York Dock Board of Arbitration to rule on the merits of the BLET's claim on reverse lodging and reverse HAHT benefits pursuant to the amended Side Letter Number 11. By virtue of the Carrier's actions since the decision appealed from in this appeal, namely, the decision of Chairman James McDonnell not to exercise jurisdiction or even consider the merits of the BLET claim, a massive relocation of engineers will now follow during the pendency of this appeal. The older engineers who lose their reverse lodging right and HAHT benefits will be forced to exercise their bumping rights or move from the Dexter area. These older engineers will have only 48 hours to make that decision after the Carrier "re-bulletins" or advertises these new non-Dexter terminal positions. When the older engineers bump the younger engineers who are already in Dexter, the younger engineers will have to decide in five days – only five days – whether to exercise their right to bump engineers at other terminals more than thirty miles away from Dexter. A second round of relocations and moves will occur during the pendency of this appeal. Then engineers at other terminals will be bumped and many of the engineers outside of Dexter will now find that they have to move as well. The domino effect will continue across the territory outlined in the St. Louis Hub Agreement and will be profoundly destabilizing. The St. Louis Hub Territory runs as far south as Pauper Bluff, Missouri and almost as north as Chicago, Illinois. The St. Louis Territory is substantial and covers roughly 82,500 square miles, running roughly 300 miles north and south and 250-275 east and west. It is important therefore

that the STB issue a stay immediately to stave off this harm not just to the Dexter engineers but other engineers across the St. Louis Hub territory.

4. Furthermore, a stay of any action by the Carrier is in the public interest and will promote the goals of federal labor policy, especially the labor policy that is incorporated in the New York Dock Conditions and mandated by Congress. That is, apart from the imminent harm to up to dozens or more engineers who may be required in a few days to relocate to other terminals, the decision by Chairman McDonnell appealed from herein will vitiate the integrity of hub merger agreements in general and destabilize labor relations in various ways adverse to the goals of federal labor policy.

5. Arbitrator McDonnell held that the Side Letter Number 11 to the St. Louis Hub Merger Implementing Agreement is not part of such Agreement. As a result the Arbitrator claimed that he had no jurisdiction to decide the meaning or application of Side Letter Number 11 as amended and the claim of BLET that the engineers are entitled to reverse lodging and HAHT payments as lifetime benefits based on attrition.

6. Apparently, Arbitrator McDonnell took the view that a side letter to a merger agreement is not part of a merger agreement. Since it is not part of a merger agreement, it has no validity for New York Dock purposes. This extraordinary holding is unprecedented. Not even the carrier made the argument that a side letter cannot be part of a merger agreement, since such an argument is profoundly destructive to the stability of the arrangements negotiated by carrier and organization alike. If this extraordinary decision to decline jurisdiction is not stayed immediately, the effect of the McDonnell decision will be either to vitiate or call into question every single side letter or understanding implementing a merger agreement. This result is contrary to the

expectations of the parties in dozens if not hundreds of situations. It unsettles the implementation of virtually every merger agreement in America until the STB rules on the merits of this appeal.

7. The BLET has appealed the decision and is seeking review. Furthermore, as set out above, the appeal has an overwhelming likelihood of success on the merits. It is virtually a tautology that a side letter to a merger agreement has to be deemed as part of such an agreement. It is the BLET's purpose to obtain from the STB not a decision on the merits of the reverse lodging claim or the application of Side Letter Number 11 as amended, but simply an order directing a New York Dock Board of Arbitration to exercise its jurisdiction to consider side letters to agreements as being part of the agreements and therefore within their jurisdiction to decide. Any other result will cause unthinkable havoc in the railroad industry. The arbitration on the merits of the BLET claims should be ordered at once.

8. Meanwhile a stay is even more urgent because it is likely that in the next few days, up to thirty or more engineers will be required to relocate from Dexter at their own expense and at great financial and psychological cost to them and their families or bump younger engineers currently working at Dexter or in the Dexter area. These younger engineers will in turn have to relocate at their own expense. It is urgent and necessary that in order to stop this relocation the Board grant an appeal immediately, and to stop the other relocations that will surely follow.

9. Attached to this motion is the notice from the Carrier demonstrating its intent to stop these reverse benefits to the engineers at Dexter. Also attached to this motion is further correspondence between the Carrier and the Organization. The Organization

wants to meet and negotiate over these changes before they are made and requests at a minimum that a stay be granted at least until both parties have a chance to meet and negotiate over these changes. A verification is submitted to show the authenticity of these letters.

10. The Carrier has made it clear that it interprets the law so that neither the amended Side Letter Number 11 nor the Railway Labor Act prohibits it from making these changes prior to any determination on the merits. For that reason the Organization fears that the Carrier will make the changes without any negotiations. To allow the Carrier to make the change prior to negotiations and prior to a decision on the merits will cause irreparable harm to the engineers at Dexter and within the St. Louis Hub territory. WHEREFORE BLET respectfully requests that the STB maintain the status quo by granting BLET's motion to stay until the merits of this case can be determined.

Respectfully submitted,


Attorneys for BLET

Thomas H. Geoghegan
Carol Nguyen
DESPRES, SCHWARTZ & GEOGHEGAN
77 W. Washington St., Suite 711
Chicago, IL 60602
(312) 372-2511

CASE NO. 1

ARBITRATION COMMITTEE

IN THE MATTER OF ARBITRATION

BETWEEN

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
AND TRAINMEN, GENERAL COMMITTEE OF ADJUSTMENT
CENTRAL REGION
ORGANIZATION**

AND

**UNION PACIFIC RAILROAD COMPANY
CARRIER**

FOR THE ORGANIZATION:	Charles R. Rightnowar
FOR THE CARRIER:	A. Terry Olin
NEUTRAL:	Dr. James R. McDonnell

HEARING DATE: **August 24, 2004**

HEARING LOCATION: **Omaha, Nebraska**

UNION PACIFIC RAILROAD COMPANY'S QUESTIONS-AT-ISSUE

Procedural Issue:

1. Is the matter of Union Pacific's alleged violation of the October 18, 1999 Letter of Understanding between Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers involving the assignment of proper rights engineers at Dexter, Missouri, a subject properly adjudicated pursuant to Section 11 of New York Dock?

Merits Issue:

2. If the answer to Question No. 1, above, is answered in the affirmative, is Union Pacific's assignment of engineers residing at/near Poplar Bluff, Missouri, or Illmo, Illinois, and possessing "reverse lodging and held-away" privileges pursuant to Article I, Section A, Paragraph 2, Subparagraph I and Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement, dated April 15, 1998, to positions with on-duty points at Dexter, Missouri, (other than the freight pool(s)) consistent with the provisions of the October 18, 1999 Letter of Understanding between Union Pacific and the Brotherhood of Locomotive Engineers?

ORGANIZATION QUESTIONS-AT-ISSUE

1. Whether the Carrier violated the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement, or any other BLE Agreement, by forcing Engineers from the St. Louis-Dexter and Salem-Dexter freight pools to the Extra Board at Dexter, Missouri?
2. If so, what shall the remedy be?
3. Whether the Dexter Extra Board Engineers displaced by the Carrier's action in Question No. 1, that were forced to assignments at other locations, such as St. Louis, Missouri, and Dupu, Illinois, were forced-assigned in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement?
4. If so, what is the remedy?
5. Whether the forced-assignment of Engineers from St. Louis, Missouri and Dupu, Illinois, to assignments at Dexter, Missouri, violated the October 18, 1999

Agreement, amending Side Letter No. 11 of the St. Louis Merger Implementing Agreement?

6. If so, what shall the remedy be?
7. Whether those Engineers improperly displaced at Dexter, Missouri, by the Engineers forced-assigned to that location by the Carrier's actions in Questions Nos. 1 and 5, and were subsequently forced to assignments at Trainmen, were so assigned in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement?
8. If so, what shall the remedy be?

DECISION

I have reviewed and analyzed all of the documents, evidence, and the written and verbal submissions presented by the parties in this dispute.

I find that the threshold question submitted by the Union Pacific Railroad Company's Question at issue is controlling.

I find that the answer to that question is in the negative.

After months of study I have concluded that I am not empowered to resolve the issue before me.

The Side Letter No. 11 dated April 15, 1998 does not find its genesis in the Merger Implementing Agreement, but rather, stands for what it is; a side letter. In paragraph two(2) of the Side Letter it states:

"The purpose of this Side Letter is to more specifically define the rights and responsibilities of said engineers at Poplar Bluff and Illmo in line with the Merger Implementing Agreement for the St. Louis Hub and Side Letter No. 21."

It is a stretch to claim that Side Letter No. 11 has a clear and direct connection to the Merger Implementing Agreement. It does not.

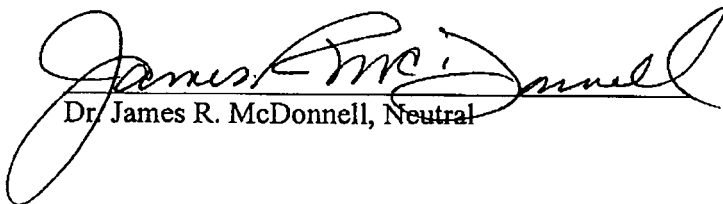
I cannot reach the merits in this case because the negative answer to Procedural Issue 1, submitted by the Carrier, will not allow it.

This matter does not find itself in the jurisdictional territory of a New York Dock arbitrator.

AWARD AND ORDER

This committee finds that it does not have jurisdiction to resolve the dispute presented.

All claims presented by the Organization in this matter are denied.



Dr. James R. McDonnell, Neutral

Charles R. Rightnowar, Organizational Member

Terry Olin, Carrier Member

April 14, 2005
Date

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

IN THE MATTER OF NEW YORK DOCK ARBITRATION
BETWEEN UNION PACIFIC RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
(ARBITRATION REVIEW)

DECLARATION OF CHARLES R. RIGHTNOWAR

I, Charles R. Rightnowar, declare under penalty of perjury under the laws of the United States of America, that the following statements of fact are true and correct.

1. I am over eighteen years of age. I have personal knowledge of the facts stated in this declaration and if called upon to testify, I could testify competently to such facts.
2. I am currently the General Chairman of the Brotherhood of Locomotive Engineers and Trainmen ("BLET") for the Central Region.
3. I have received letters from Union Pacific regarding the reverse lodging and held-away-from-home-terminal benefits of Dexter area engineers. These letters from Union Pacific are dated April 4, 2005 and May 6, 2005. I responded to these letters on April 29, 2005 and May 9, 2005 respectively.

True and correct copies of these letters are attached.

FURTHER AFFIANT SAYETH NAUGHT.


Charles R. Rightnowar

Dated: May 10, 2005

UNION PACIFIC RAILROAD COMPANY

Robbin D. Rock
Director
Labor Relations Dept.

1400 Douglas Street - Stop 0710
Omaha NE 68179-0710
(402) 544-4353



April 4, 2005

(110.61-21)

U. S. CERTIFIED MAIL - 7002 0460 0001 3205 0220
Return Receipt Requested
E-Mail - CRR9007@aol.com
FAX - 314-895-0104

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLET
320 BROOKES DR STE 115
HAZELWOOD MO 63042

Dear Sir:

This is in reference to Side Letter No. 11 contained in the St. Louis Hub Merger Implementing Agreement between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers and Trainmen.

Your attention is directed towards Section 5 of Side Letter No. 11, which reads as follows:

- "5. *Effective upon service of notice by the Carrier, which cannot be served any sooner than April 1, 2005, the 'reverse lodging' attrition arrangements set forth in this Agreement shall become null and void. On and after that date, all engineers described in Sections 1, 2 and 3 above shall be required to protect their respective freight pools at the designated home terminal locations if they choose to continue to occupy such assignments. This change shall be effected by the service of a thirty (30) day notice by the Carrier of its intent to do so.*"

In accordance with Section 5, this letter shall serve as the required thirty (30) day notice by Union Pacific that engineers described in Section 1, 2 and 3 of Side Letter No.

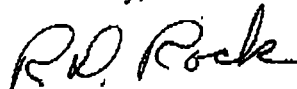
C. R. Righthowar
April 4, 2005
Page 2

11 shall be required to protect their respective freight pool at the designated home terminal if they choose to continue to occupy such position.

In order to expedite this arrangement and provide engineers an opportunity to determine which position they desire to occupy. All affected positions will be re-bulletined.

If you have any concerns or questions, please contact me within ten (10) days in order to address your concerns within the thirty (30) days provided in the Agreement.

Sincerely,



R. D. Rock
Director - Labor Relations

cc: Joe Santamaria
Dan Witthaus
Mark Payne
Pat Kenny
Shane Keller
A. T. Olin



Brotherhood of Locomotive Engineers and Trainmen
A Division of the Rail Conference-International Brotherhood of Teamsters
General Committee of Adjustment
Union Pacific Railroad-Central Region

320 Brookes Drive-Suite 115
Hazelwood, MO 63042
Phone (314) 895-5858 Fax (314) 895-0104
Email - crr9007@aol.com

C.R. Rightnowar
GENERAL CHAIRMAN
R.E. Rhodes
1ST VICE-CHAIRMAN
R.L. Law
2ND VICE-CHAIRMAN
D.W. Grimes
3RD VICE-CHAIRMAN
W.D. Gaddy
SECRETARY-TREASURER



April 29, 2005

U. S. CERTIFIED MAIL – 7004 2890 0002 0177 4452
Return Receipt Requested
E-Mail – rdrock@up.com
Fax – 402-501-0118
402-233-2243

Mr. Robbin D. Rock
Director of Labor Relations
STOP 0710
1400 Douglas Street
Omaha, Nebraska 68179-0710

RE: L/R File No. 110.61-21

Dear Mr. Rock:

Due to a fire on the second floor of our building, our office has been covered with soot, and is being professionally cleaned; however, during this process our files have either been packed up and moved, or covered with protective plastic drop cloths. As such, I have been delayed in sending you this response.

Please stand advised that I do not agree with the contents of your letter dated April 4, 2005, related to the above-designated Labor Relations file.

Side Letter No. 11 was modified by the Letter of Understanding dated October 18, 1999 (Labor Relations File 110.61-21-303), which places the employees at Dexter, Missouri, in the same position as those employees at Jefferson City, Missouri, as to the attrition arrangements. I have discussed this matter with former SSW General Chairman D. E. Thompson, and he concurs with my position. This Letter of Understanding cannot be unilaterally abrogated, and the Carrier must maintain the status quo until such time as this matter can be resolved by the parties, or resolved through expedited arbitration.

It is the position of this General Committee that the above-referenced Letter of Understanding is a Collective Bargaining Agreement negotiated pursuant the Surface Transportation Act, and is within the jurisdiction of a New York Dock Arbitrator.

Although Dr. James R. McDonnell wrongly refused to interpret and apply Side Letter No. 11, as well as this Letter of Understanding that amended Side Letter No. 11, his Award will be appealed to the Surface Transportation Board early next week. However, without waiver of the foregoing, assuming *arguendo*, but incorrectly, that jurisdiction is more properly within the ambit of the Railway Labor Act, the Carrier must still maintain the status quo pending resolution under that Act, or be in violation of Section 2, Seventh, and Section 6 of the Act. Unilateral abrogation is not permitted by either Act. Should the Carrier proceed in violation of its duty to maintain the status quo actual working conditions of the employees, the undersigned, on behalf of the Organization representing those employees, retains all rights to respond appropriately.

It should be noted that the St. Louis Hub Merger Implementing Agreement, Side Letter No. 23, preserved the Side Letter No. 1 rights from the UP/MKT Merger Agreement for those employees who have seniority dates appropriate for its application.

Should the Carrier be permitted unilateral action in this matter, the entire seniority system will be placed in disarray, where Engineers will be sent all over the St. Louis Hub, could not be returned to their proper slots or back to their homes over the long period of time that it would take to obtain a non-expedited arbitration Award, and where the employees and their families will be disrupted with social and psychological consequences.

I would be more than happy to meet with you at any time in the near future, at a location of mutual convenience.

Regardless of the positions taken thus far by either party, the Carrier has no right to bulletin any jobs, nor is there any reason for any employee to be required to change their place of residence. It is my recommendation that the Carrier rescind any instructions as to same, so as to maintain, unchanged, the actual status quo conditions.

If you do not wish to meet with the undersigned, please advise immediately, so that this General Committee may request a selection list for a New York Dock Arbitrator to resolve this new dispute.

Please advise.

Sincerely,


Charles R. Rightnowar

UNION PACIFIC RAILROAD COMPANY

1400 Douglas Street, STOP 0710
OMAHA, NEBRASKA 68178-0710



May 5, 2005

110.61 - 21

VIA FAX, U. S. MAIL & E-MAIL

Mr. C. R. Rightnowar
General Chairman
Brotherhood of Locomotive Engineers
and Trainmen
320 Brookes Drive, Suite #115
Hazelwood, MO 63042

Dear Mr. Rightnowar:

This letter is in regard to your correspondence dated April 29, 2005, concerning Union Pacific Railroad Company's ("UP") April 4, 2005 notice advising of its intent to discontinue, pursuant to Side Letter No. 11 of the St. Louis Hub UP/SP Merger Implementing Agreement, payment of "reverse" held-away and lodging benefits at Dexter, Missouri.

The purpose of this letter is to respond to the allegations and statements contained in the above-referenced correspondence. The extent of the erroneous, occasionally sensational and inexplicable misrepresentations warrants a lengthy and detailed response.

It is obvious your goal is to deny UP its undeniable right, as set forth in Side Letter No. 11, to discontinue the "reverse" lodging and held-away payments to certain engineers at Dexter. The mandates of Side Letter No. 11 are, however, concise and irrefutably clear regarding UP's right and the process it must follow to discontinue those "reverse" benefits. In this regard, Item 5 of Side Letter No. 11 specifies that, "... upon service of a notice by the Carrier, which cannot be served any sooner than April 1, 2005, the 'reverse lodging' attrition arrangements set forth in this Implementing Agreement shall **become null and void**. . . . This change shall be effected by the service of a thirty (30) day notice by the Carrier of its intent to do so" (Emphasis added) UP intends to effect the change described in Item 5 and accordingly advised you of that intent in its April 4, 2005 notice. Thus, the one and only requirement for discontinuing the "reverse" benefits has been satisfied.

You attempt to justify your challenge of UP's notice with the argument that an October 18, 1999 Letter of Understanding somehow modified Side Letter No. 11. Your interpretation of the October 18, 1999 Letter of Understanding ("Understanding") is

misplaced and wholly unsubstantiated by the language of the Understanding. The shortcomings in your interpretation are vividly highlighted by the following irrefutable facts:

- The Understanding contains no reference to, or cites any portion of, the language of Side Letter No. 11 – i.e., Item 5 – governing UP's right to discontinue the "reverse" benefits after May 1, 2005. A review of the Understanding requires the conclusion that the Understanding neither addresses nor modifies any portion of Item 5.
- There is absolutely no language in the Understanding that either terminates UP's right to discontinue the "reverse" payments or permanently extends those benefits for engineers at Dexter. Furthermore, the Understanding does not contain any language that modifies in any manner this provision.
- Your assertion that the Understanding was intended to "*... place[] the employees at Dexter, Missouri, in the same position as those employees at Jefferson City, Missouri as to the attrition arrangements ...*" does not withstand even casual scrutiny. If, as you contend, such was the intent of the Understanding, why did not its authors specifically address the permanency of the "reverse" benefits for engineers at Dexter? If this was to be the parties' intent, then it is apparent your organization failed to accomplish that end and to responsibly execute your duties in this regard. The Understanding does not contain any provision or even a reference to the matter of the duration or permanency of these benefits.
- The question must be asked why, if the intent of the Understanding was to modify Side Letter No. 11 to place Dexter engineers in the same standing as Jefferson City engineers regarding the "reverse" benefits, did you execute a nearly identical Letter of Understanding (on the same date) for engineers at Memphis, even though they already possessed "permanent" (attrition-based) "reverse" benefits?

Based on the foregoing, it is abundantly clear the intent of the Understanding is not what you say it is; the intent was not to modify Side Letter No. 11. The sole intent of the Understanding is to address the filling of engineer assignments/vacancies.

Furthermore, the Understanding contains no language, implied or otherwise, that modifies or restricts UP's rights under Item 5 of Side Letter No. 11 or serves as a bar to UP exercising that right. It is neither insignificant nor coincidental that you failed to cite anywhere in your April 29 letter the applicable language in the Understanding that serves to bar UP from exercising the right to discontinue the "reverse" benefit payments. The lack of any such language, along with your failure to identify language creating that bar, leaves UP free to exercise its agreement right. Inasmuch as there is no such prohibition, UP's exercise of the right to discontinue the involved benefits comports with the language of Side Letter No. 11.

Since the issue in this matter is the interpretation of a collective bargaining agreement provision, UP is not barred from applying or implementing its interpretation of Side Letter No. 11 and the October 18 Letter of Understanding. In these circumstances, there is no legal bar preventing UP from exercising its collective bargaining agreement rights. If your organization does not like or accept UP's interpretation or application, it is free to progress grievances against UP within the framework established by the Railway Labor Act and controlling collective bargaining agreement provisions.

UP also disagrees with your assertion the Understanding was "*... negotiated pursuant [to] the Surface Transportation Act, and is within the jurisdiction of a New York Dock Arbitrator.*" Neither UP nor BLET were under any legal obligation to negotiate the agreement that ultimately became the October 18, 1999 Letter of Understanding. UP's obligations under Article 1, Section 4 of New York Dock had ceased coincident with the implementation of the St. Louis Hub UP/SP Merger Implementing Agreement. This Understanding, negotiated approximately 7 months after the St. Louis Hub UP/SP Merger implementing Agreement was put into place, had no genesis in New York Dock, but rather from traditional labor/management relations. Rather, the Understanding arose from both parties' pursuit of a mutually beneficial arrangement. Thus, this matter falls far outside the jurisdictional boundaries of an arbitration panel established pursuant to Article I, Section 11 of New York Dock. Consequently, there is no obligation to submit this interpretation dispute to arbitration under the auspices of New York Dock. This is a minor dispute under the Railway Labor Act subject to Section 3 arbitration.

You state in the first paragraph on page 2 of your letter, "*... the Carrier must still maintain the status quo pending resolution under that Act, or be in violation of Section 2, Seventh, and Section 6 of the Act. Unilateral abrogation is not permitted by either Act. Should the Carrier proceed in violation of its duty to maintain the status quo actual working conditions of the employees, the undersigned, on behalf of the Organization representing those employees, retains all rights to respond appropriately.*" As mentioned, this dispute is clearly a minor dispute focusing on the interpretation and application of the Understanding and Side Letter No. 11.

You devote nearly the entirety of the first page and part of the second page setting forth your interpretation of the Understanding and identifying, at least in your view, a forum for arbitrating this dispute. The last line of the third paragraph on page 1 of your letter specifically indicates this matter must be "*... resolved through expedited arbitration.*" Additionally, the penultimate paragraph of your letter specifically sets forth your intent to seek arbitration of this matter under the auspices of New York Dock. Unquestionably, you have acknowledged and have ceded that this matter is a minor dispute.

In view of your organization's recognition this is a minor dispute, UP is not barred by the Railway Labor Act, *including "... Section 2. Seventh, and Section 6..."* from executing its Side Letter No 11 right to cancel the reverse lodging and held-away benefits. Consequently, the cited provisions of the Railway Labor Act are inapplicable

in this circumstance. Moreover, the Railway Labor Act neither requires UP to withdraw from its interpretation and application or places a "status quo" obligation on UP when the matter is a minor dispute. Therefore, UP is free to pursue its interpretation and application of the agreement provision in question.

In case there is any question in your mind regarding UP's intention in this matter, UP will not withdraw its April 4, 2005 notice nor postpone its plans for discontinuing payment of the "reverse" benefits to eligible engineers at Dexter on or after May 4, 2005. UP will not "... *rescind any instructions* ..." and will proceed with its plans for implementing the right granted it by your organization in Item 5 of Side Letter No. 11. Given the clear and straightforward right granted UP by Side Letter No. 11, the complete lack of legitimacy of your interpretation of the Understanding, and your acknowledgement, this matter is a minor dispute (which consequently does not create a "status quo maintenance" obligation on UP), UP will promptly pursue all legal actions, including seeking monetary and punitive damages against any person or entity, including yourself, BLET or any of its members, who elect to participate in an illegal activity, including strikes, slow downs and work/service disruptions of any kind as part of your purported "... right[] to respond appropriately ..." (Emphasis added)

It is appropriate to address several of the other statements contained in your April 29 letter. In the third paragraph on page 2, you assert that if UP exercises its Side Letter No. 11 right that "... *the entire seniority system will be placed in disarray, where Engineers will be sent all over the St. Louis Hub, could not be returned to their proper slots or back to their homes ... and where the employees and their families will be disrupted with social and psychological consequences.*" This assertion is wholly unfounded and nothing more than hyperbole. As you are fully aware, UP's exercise of its Side Letter No. 11 right does not alter one aspect of the seniority system in place in the St. Louis Hub – not engineer's seniority date will be changed; not one engineer's standing on the roster(s) will be changed; not one seniority obligation will be changed; not one seniority right will be changed; not one rule governing the assignment of engineers to jobs, including to jobs at outside locations, will be changed.

The second paragraph on page 2 contains a statement that Side Letter No. 1 of the UP/MKT Merger Agreement is preserved. The inclusion of this argument with the instant dispute is clearly disingenuous and represents nothing more than an endeavor to introduce an entirely unrelated issue into this dispute and foster further discord. Nonetheless, and for the record, there is no agreement language or any tortured interpretation that supports your argument. Moreover, your interpretation stands in stark contrast to the accepted practice regarding the handling of surplus engineers following implementation of the St. Louis Hub Merger Implementing Agreement.

Next, your statement "... *the Carrier has no right to bulletin any jobs ...*" is obviously in contradiction with the specific and uncontested language contained in applicable Agreement rules governing the bulletining of jobs. There is nothing in this dispute nor in UP's contemplated actions that is or will be in violation of said rules.

Finally, UP agrees a meeting on this matter is appropriate. In addition to discussing our respective positions on the interpretation of the Understanding, such a session will help to ensure an orderly transition and assignment to jobs for Dexter engineers no longer receiving the "reverse" benefits. In view thereof, I suggest the parties meet at UP's Headquarters Building, located at 1400 Douglas Street (Seventh Floor) in downtown Omaha on Monday, May 16, 2005. I will rearrange my various other meetings and assignments to best accommodate your itinerary. I will await further advice from you regarding your preference for our meeting.

Sincerely,



R. D. Rock
Director - Labor Relations
Arbitration & Negotiations

cc: Mr. A. Terry Olin
Mr. R. D. Meredith
Mr. T. G. Taggart
Mr. J. M. Santamaria - Kansas City, MO



Brotherhood of Locomotive Engineers and Trainmen
A Division of the Rail Conference-International Brotherhood of Teamsters
General Committee of Adjustment
Union Pacific Railroad-Central Region

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R.E. Rhodes
1ST VICE-CHAIRMAN
R.L. Law
2ND VICE-CHAIRMAN
D.W. Grimes
3RD VICE-CHAIRMAN
W.D. Gaddy
SECRETARY-TREASURER



May 9, 2005

Via Email – rdrock@up.com

Via Facsimile – US Mail:

Certified Mail – Return Receipt Requested

7004 2890 0001 4801 1801

Mr. RD Rock
Director – Labor Relations **STOP 0710**
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179-0710

Dear Sir:

Without waiver of our positions, as set forth in April 29, 2005, letter, please stand advised that I fear that the membership and their families will suffer irreparable harm if we delay this meeting to May 16, 2005. As such, I suggest that we meet this week, and have cleared my entire schedule for this purpose.

I reject your “tortured” misreading of my correspondence; I have not “ceded” to your position. However, I am taking every opportunity to resolve this issue to our mutual interest.

You are violating Section 11326 of the ICC Termination Act and the Surface Transportation Board’s Order and Conditions imposed in the UP/SP Merger, including the Merger Implementing Agreement, and its Side Letters, imposed pursuant to Section 4 of the New York Dock Conditions, which were made a condition of the merger by the Board.

I have advised that you do not have the authority to re-bulletin any assignments; as such, any manpower problems will be due to the Carrier’s creation of massive confusion in the seniority system, caused by its abrogation of the agreements, and the

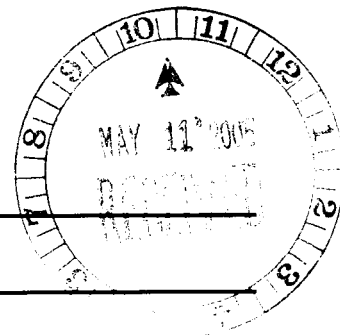
threatened re-bulletins. The effects of the abrogation of the agreements, and the illegal re-bulletin of the assignments, are completely the Carrier's responsibility.

Please advise.

Yours truly,

A handwritten signature in black ink, appearing to read 'Charles R. Rightnowar', with a stylized flourish at the end.

Charles R. Rightnowar
General Chairman BLET
Union Pacific – Central Region



EXPEDITED HANDLING REQUESTED

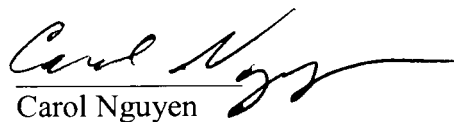
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

IN THE MATTER OF NEW YORK DOCK ARBITRATION
BETWEEN UNION PACIFIC RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
(ARBITRATION REVIEW)

Certificate of Service,

I, Carol Nguyen, an attorney, caused a copy of PETITIONER'S MOTION TO STAY THE DECISION OF NEW YORK DOCK ARBITRATOR, to be mailed to Mr. A. Terry Olin, General Labor Relations, Stop 0710, 1400 Douglas Street, Omaha, Nebraska via regular U.S. Mail on May 10, 2005.


Carol Nguyen