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March 25, 1987

LETTER NO. WR-16-84

Chairpersons,
General Committees of Adjustment
United Transportation Union
In the United States

Re: UTU/NRLC Arbitration Board
Agreement of October 31, 1985

Dear Chairpersons:

Attached herewith you will find copy of a summarization of those Awards rendered by Arbitrators Richard R. Kasher and Robert E. Peterson covering the application of various Articles of the October 31, 1985 National Agreement, along with a complete copy of the Awards themselves. The summarization is a brief description of the findings of the Awards.

While some of these Awards sustained our position with respect to the application of the agreement provisions in dispute, others were not so favorable. Nonetheless, we are now in receipt of the Awards and those valid time claims resulting from rule violations and misapplication can now be progressed for payment.

It should be noted that, contrary to the arguments expressed by the Carriers during the presentation of these disputes to the Arbitrators, the Awards are applicable retroactive to the effective date of the Article. Further, the Board had retained jurisdiction of any disputes which may arise out of these awards or any other provisions of the 1985 Agreement.

The Awards furnished herewith cover those disputes which affected the greatest number of employees throughout the country. We realize there are still a great number of disputes involving the interpretation of this Agreement, some of which may yet be resolved by the Joint Interpretation Committee and Arbitration, if necessary. Other disputes are solely local in nature and may have to be handled before Public Law Boards by the individual committees.

As any additional information regarding these Awards or other provisions of the Agreement becomes available, it will be promptly distributed in the usual manner.

Fraternally yours,

Fred A Hardin

President

Enclosures

cc: International Officers

The following is a summarization of the Awards rendered by Arbitrators Richard R. Kasher and Robert E. Peterson pursuant to Article XVI of the October 31, 1985 National Mediation Agreement in final settlement of disputes which have arisen under various Articles:

ARTICLE I - GENERAL WAGE INCREASES

The Board determines the appropriate method of adjusting guarantees in the application of wage increases provided for in the 1985 Agreement. It is held that the original time documents, or time documents for the most recent 12 month period immediately prior to November 1, 1985 in the event the original documents are no longer available, shall be used to determine what percentage of compensation during that period represents compensation eliminated, reduced or frozen by the 1985 Agreement. Thereafter, the general wage increase shall be reduced by the percentage as arrived at above and then applied to the guarantee in the manner set forth in the Board's example. Note that this does not reduce the guarantee, nor does it eliminate those payments for final terminal delay and other penalty payments as the Carriers attempted to achieve.

ARTICLE IV - PAY RULES (1)

The Board holds that the provisions of Article IV, Section 2, Miles in Basic Day and Overtime Divisor, are applicable to existing interdivisional runs and new interdivisional runs established pursuant to Article IX of the 1985 Agreement, except where special recognition was given by the parties to interdivisional service.

ARTICLE IV - PAY RULES (2) AND INTERPRETATION

The Board finds that Article IV did change the method of computing overtime for both existing interdivisional runs and those which may be established under Article IX. However, in view of special recognition given by the parties to interdivisional service, the Board deems it appropriate to hold that special overtime rules that are more favorable to the employees continue to apply to employees with seniority prior to November 1, 1985 when such employees are working on interdivisional runs established prior to October 31, 1985.

ARTICLE IV - PAY RULES (3)

The Board holds that runaround payments are penalty payments, not duplicate time payments as argued by the Carriers, and therefore subject to increase in the usual manner.

ARTICLE V - FINAL TERMINAL DELAY (1) AND INTERPRETATION

The Board finds that Article V, Section 1 did supercede preexisting rules or practices specifying the points where computation of final terminal delay time commences. However, in resolving the dispute as to where the new point shall be, the Board refers to the BLE Arbitration Award and the desire of the Carriers for a uniform rule. In keeping with the principle established in the BLE Arbitration, the Board holds that the point established for engineers shall also govern here, thereby having a common national final terminal delay rule for all train and engine service employees. That is the switch, or signal governing same, used in entering the final terminal yard where the train is to be left or yarded.

ARTICLE V - FINAL TERMINAL DELAY (2)

With regard to the yarding of trains on a main line or running track, the Board holds that computation for final terminal delay begins to accrue when the engine reaches the entrance track switch connection to the last train yard before the location at which the train is designated to stop on a main line or running track.

ARTICLE V - FINAL TERMINAL DELAY (3)

The Board finds nothing in Article V that suggests that such Article would not have application to either existing or newly established interdivisional service in the same manner and to the same extent as it would apply to all other through freight service.

ARTICLE V - FINAL TERMINAL DELAY (4)

With regard to the final terminal delay point for crews delivering trains to foreign carriers, the Board concludes that the point for computation of final terminal delay for crews who deliver and yard their train in a foreign railroad in pursuance of the "solid train" provisions of Article VII of the January 27, 1972 National Agreement is as set forth in Section 1 of Article V of the October 31, 1985 National Mediation Agreement, i.e., the switch used in entering the final yard where the train is to be left or yarded, except in this instance it would be the yard of a connecting carrier.

ARTICLE VI - DEADHEADING

The Board holds that there is nothing contained in Article VI, Deadheading, of the October 31, 1985 National Mediation Agreement to suggest that such Article would not have application to either existing interdivisional service or new interdivisional runs established under Article IX, Interdivisional Service, to the same extent that such Article VI would be applicable to all other through freight service.

ARTICLE VIII - ROAD-YARD AND INCIDENTAL WORK (1)

The Board holds that while preexisting rules prohibiting road crews from going on or off duty at other than designated points are relaxed so as to permit road crews to get or leave their train at any location within a terminal, Section 1(a) did not, as urged by the Carrier, extend to road crews the right to perform yard service where such work is otherwise restricted by preexisting agreements.

ARTICLE VIII - ROAD-YARD AND INCIDENTAL WORK (2)

With regard to locations where existing coordination agreements established specific work jurisdictions which were not specifically superceded by Article VIII, the Board concludes that those agreements continue in full force and effect. However, in cases where a carrier is exercising a right under Section 1, preexisting limitations are superceded.

ARTICLE VIII - ROAD-YARD AND INCIDENTAL WORK (3)

The Board finds that the phrase "any location within the initial and final terminal" can only be interpreted as having included the geographic confines of the initial or final terminals.

ARTICLE VIII - ROAD-YARD AND INCIDENTAL WORK (4)

The board holds that the agreed upon interpretations of the August 25, 1978 National Agreement remain unchanged with respect to the application of Section 1(b), except that two instead of one straight pick-up may be made at the initial terminal and two instead of one straight set-out may be made at the final terminal.

ARTICLE VIII - ROAD-YARD AND INCIDENTAL WORK (5)

The Board holds that Section 1(e), which removes restrictions at locations outside switching limits with respect to holding onto cars, establishes by contract law principles that existing restrictions within switching limits were not changed.

ARTICLE VIII - ROAD-YARD AND INCIDENTAL WORK (6)

With regard to the use of yard crews to service customers within 20 miles of switching limits where carriers were previously required to call extra road crews, the Board holds that the use of yard crews in such instances must be on a limited or incidental basis. If the amount of work by the yard crew was to constitute the preponderance of duties, it would be a violation of the agreement since it would be tantamount to the elimination of a regular pool, or extra road crew or crews in the territory.

ARTICLE VIII - ROAD-YARD AND INCIDENTAL WORK (7)

In resolving the dispute over what may properly be required of employees insofar as supplying locomotives and cabooses, the Board finds that a prudent rule of reason should prevail without doing violence to the work rights of another craft as established on any railroad. In this regard, the Board anticipates that if the parties monitor this holding, they should be able to establish meaningful guidelines so as to eliminate the necessity for future grievances.

ARTICLE IX - INTERDIVISIONAL SERVICE (1)

This dispute involves the question of whether Article IX is applicable for the establishment of interdivisional service on the Chicago and North Western Transportation Company. The Board finds that this matter was addressed on the property which resulted in the Award of Public Law Board No. 4099 and this Board finds no reason to disagree therewith.

ARTICLE IX - INTERDIVISIONAL SERVICE (2)

The Board holds that the provisions of Article IX permit the Carrier to establish service through existing home terminals. However, in so doing the provisions of Article XII, Section 2(a) of the January 27, 1972 National Agreement with respect to comparable housing in a higher cost real estate area will prevail.

ARTICLE XIII - FIREMEN (1)

Concerning the question of whether Carriers may properly leave fireman positions unfilled equal to the number of firemen on "reserve status" in instances where firemen return from engineer status or where runs employing firemen are abolished, the Board finds that in view of the provisions of subparagraph (4) and Question and Answer Nos. 1 and 2, a Carrier may elect not to fill such position and that a fireman in "reserve status" is considered to be an active employee.

ARTICLE XIII - FIREMEN (2)

With regard to employees other than those represented by UTU performing incidental hostling service, the Board holds that the use of other than employees represented by the UTU to make incidental hostling moves should generally be limited to instances such as described by the Carriers in its presentation when making reference to a dispute of record, e.g., "moves by a mechanical department employee which are only occurring at the very most, two or three time in one eight-hour tour of duty . . [and] . . take no longer than five minutes to accomplish."

ARTICLE XIII - FIREMEN (3)

The dispute over whether the Chicago and North Western Transportation Company violated Article XIII when it discontinued the use of certain hostler and hostler helper assignments is remanded to the parties without prejudice to their right to resubmit the dispute to arbitration.

ARTICLE XIII - FIREMEN (4)

The Board holds that Carriers can not abolish hostling assignments under local and preexisting rules if it will cause a fireman (helper) who established seniority prior to November 1, 1985 to be placed in or remain in a furloughed status.

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ARTICLE XVII - GENERAL PROVISIONS

The Board holds that Section 6 Notices requesting employee protection in the event of merger, sale, lease or any other transaction which may result in an adverse affect to the employees are prohibited by the moratorium provisions of the 1985 Agreement.

* 2 NEW AWARDS - MAY 1, 1989

1 LISTS EIGHT (8) SPECIFIC ISSUES WHICH ARE REMANDED TO THE PROPERTY FOR EXPEDITED HANDLING. THE OTHER REFERS TO WHAT CONSTITUTES A "FULL-TIME" HOSTLER POSITION TO BE FILLED BY UTU REPRESENTED EMPLOYEES.

JOINT INTERPRETATION COMMITTEE
ARTICLE XVI
NATIONAL MEDIATION AGREEMENT OF OCTOBER 31, 1985

UNITED TRANSPORTATION UNION
AND
NATIONAL CARRIERS' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE I - GENERAL WAGE INCREASE:

"What is the appropriate method of adjustment of guarantees under various protective agreements or arrangements to reflect application of the provisions of the October 31, 1985 National Agreement, including General Wage Increases under Article I, Sections 1 through 6; changes in the elements of compensation subject to increase under Article I, Section 8; and changes in the basis of pay and employees' earnings opportunities under Articles IV, V, VI and VIII?"

FINDINGS:

The issue here in dispute concerns a determination as to whether employees who are entitled to the payment of employee protective allowance guarantees prior to the October 31, 1985 National Mediation Agreement are subject to the application and resultant effects of such Agreement on the same basis as non-protected employees and, if so, the manner in which adjustment of such guarantees can best be accomplished.

Since the parties have not placed before us the specifics of each protective agreement, we will limit a determination of the Question at Issue to what we believe should represent a proper and equitable disposition of the issues in dispute with little, if any, major exception.

In giving studied consideration to the issues in dispute, we have borne in mind the fact that protective conditions as embodied in collectively bargained agreements and those imposed by statute or regulatory agencies have generally been recognized as protection appropriate to safeguard employees from being placed in a worse position with respect to their employment as the result of a carrier or carriers taking action with respect to a coordination, merger, consolidation, abandonment, or other authorized transaction. In this respect, Section 5(2)(f) of the Interstate Commerce Act provides:

"As a condition of its approval .... of any transaction involving a carrier or carriers by railroad .... the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees

affected [to the extent] .... that such transaction will not result in employees [affected] .... being in a worse position with respect to their employment, ..."

While changes in rates of pay in the past have ordinarily enhanced employees' protective allowances, such circumstance may not be properly interpreted as having insulated protected employees from collectively bargained changes in rates of pay, rules and working conditions which have an adverse impact. Protected employees are subject to such changes to the same extent as are non-protected employees, except as otherwise provided in applicable agreements.

Therefore, to apply across-the-board general wage increases to protective allowances without adjustment in such allowances to reflect collectively bargained changes in basic pay rules would be to place a protected employee in the position of being the beneficiary of contract improvements, but not subject to the consequences of quid pro quo productivity bargaining or, in the instant case, offsets for changes in various elements of compensation which are not subject to increase under Article I, Section 8 and changes in the basis of pay and earnings opportunities under Articles IV, V, VI and VIII of the October 31, 1985 National Mediation Agreement.

In many respects, a Special Board of Adjustment, previously established pursuant to a Memorandum of Agreement dated June 21, 1968 between the United Transportation Union and the Burlington Northern Railroad Company, made relevant and persuasive findings regarding the question at issue before this Board. That Special Board of Adjustment, in Award No. 349, released under date of June 30, 1986, with Mr. H. Raymond Cluster as the neutral and sole member of the Board, in part here pertinent, held regarding merger protected road and yard employees:

> "[The] increases provided in the National Agreement should be applied only to those components of the guarantees to which the increases themselves are limited by the terms of the National Agreement. We think that such an interpretation is consistent with the language and intent of Section 3(c) [of the Merger Agreement]. General wage increases in all previous national agreements subsequent to the Merger Agreement have been applicable generally to all components of employees' compensation; consequently, they have been applied under 3(c) to the total amount of guarantee. The increases in the 1985 National Agreement are designated therein as general increases, and we find them to be general increases within the meaning of 3(c); however, they are for the first time limited to certain components of employees' total compensation. They are in effect a different form of general increase. It is consistent with both the language and intent of 3(c) that this different form of general increase should be applied to guarantees in the same manner as it is applied to actual earned compensation."