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Case No. A-11471

MEDIATION AGREEMENT

THIS AGREEMENT, made this 31st day of October, 1985 by and between the participating carriers listed in Exhibit A, attached hereto and made a part hereof, and represented by the National Carriers' Conference Committee, and the employees of such carriers shown thereon and represented by the United Transportation Union, witnesseth:

IT IS HEBEBY AGREED:

ARTICLE I - GENERAL WAGE INCREASES

Section 1 - First General Wage Increase (for other than Dining Car Stewards and Yardmasters)

(a) Effective November 1, 1985, all standard basic daily rates of pay (excluding cost-of-living allowance) in effect on October 31, 1985 for employees represented by the United Transportation Union will be increased by one (1) percent.

(b) In computing the increase for enginemen under paragraph (a) above, one (1) percent shall be applied to the standard basic daily rates of pay applicable in the following weight-on-drivers brackets, and the amounts so produced shall be added to each standard basic daily rate of pay:

Passenger - 600,000 and less than 650,000 pounds Freight - 950,000 and less than 1,000,000 pounds
(through freight rates)
Yard Engineers - Less than 500,000 pounds Yard Firemen - Less than 500,000 pounds (separate computation covering five-day rates and other than five-day rates)

Section 2 - Second General Wage Increase (for other than Dining Car Stewards and Yardmasters)

Effective January 1, 1986, all standard basic daily rates of (excluding cost-of-living allowance) in effect on December 31, 1985 for employees represented by the United Transportation Union shall be increased by two (2) percent, computed and applied for enginemen in the manner prescribed in Section 1 above.

Section 3 - Third General wage Increase (for other than Dining

Car Stewards and Yardmasters)

Effective July 1, 1986, all standard basic daily rates of pay (excluding cost-of-living allowance) in effect on June 30, 1986 for employees represented by the United Transportation Union shall be increased by one and one-half (1.5) percent, computed and applied for enginemen in the manner prescribed in Section 1 above.

Section 4 - Fourth General Wage Increase (for other than Dining Car Stewards and Yardmasters)

Effective January 1, 1987, all standard basic daily rates of (excluding cost-of-living allowance) in effect on December 31, 1986 for employees represented by the United Transportation Union shall be increased by two and one-quarter (2.25) percent, computed and applied for enginemen in the manner prescribed in Section 1 above.

Section 5 - Fifth General Wage Increase (for other than Dining Car Stewards and Yardmasters)

Effective July 1, 1987, all standard basic daily rates of pay (excluding cost-of-living allowance) in effect on June 30, 1987 for employees represented by the United Transportation Union shall be increased by one and one-half (1.5) percent, computed and applied for enginemen in the manner prescribed in Section 1 above.

Section 6 - Sixth General Wage Increase (for other than Dining Car Stewards and Yardmasters)

Effective January 1, 1988, all standard basic daily rates of (excluding cost-of-living allowance) in effect on December 31, 1987 for employees represented by the United Transportation Union shall be increased by two and one-quarter (2.25) percent, computed and applied for enginemen in the manner prescribed in Section 1 above.

Section 7 - Standard Rates

The standard basic daily rates of pay (excluding cost-of- living allowance) produced by application of the increases provided for in this Article are set forth in Appendix 1, which is a part of this Agreement.

Section 8 - Application of Wage Increases

(a) Duplicate time payments, including arbitraries and special allowances that are expressed in time, miles or fixed amounts of money, and mileage rates of pay for miles run in excess of the number of miles comprising a basic day, will not be subject to the adjustments provided for in this Article.

(b) In engine service and in train and yard ground service, miscellaneous rates based upon hourly or daily rates of pay, as provided in the schedules or wage agreements, shall be adjusted under this Agreement in the same manner as heretofore increased under previous wage agreements.

(c) In determining new hourly rates, fractions of a cent will be disposed of by applying the next higher quarter of a cent.

(d) Daily earnings minima shall be changed by the amount of the respective daily adjustments.

(e) Standard monthly rates and money monthly guarantees in passenger train service shall be thirty times the new standard daily rates. Other than standard monthly rates and money monthly guarantees shall be so adjusted that money differentials existing as of October 31, 1985 shall be preserved.

(f) Existing monthly rates and money monthly guarantees applicable in train service other than passenger will be changed in the same proportion as the daily rate for the class of service involved is adjusted.

(g) Existing money differentials above existing standard daily rates shall be maintained.

(h) In local freight service, the same differential in excess of through freight rates shall be maintained.

(i) The differential of $4.00 per basic day in freight and yard service, and 4 per mile for miles in excess of the number of miles encompassed in the basic day in freight service, will be maintained for engineers working without firemen on locomotives on which under the former National Diesel Agreement of 1950 firemen would have been required.

(j) In computing the increases in rates of pay effective November 1, 1985 under Section 1 for firemen, conductors, brakemen and flagmen employed in local freight service, or on road switchers, roustabout runs, mine runs, or in other miscellaneous service, on runs of miles equal to or less than

the number comprising a basic day, which are therefore paid on a daily basis without a mileage component, whose rates had been increased by "an additional $.40" effective July 1, 1968, the one (1) percent increase shall be applied to daily rates then in effect, exclusive of car scale additives, local freight differentials , and any other money differential above existing standard daily rates. For firemen, the rates applicable in the weight-on-drivers bracket 950,000 and less than 1,000,000 pounds shall be utilized in bracket 950,000 and less than 1,000,000 pounds shall be utilized in computing the amount of increase. The same procedure shall be followed in computing the increases effective January 1, 1986, July 1, 1986, January 1, 1987, July 1, 1987 and January 1, 1988. The rates produced by application of the standard local freight differentials and the above-referred-to special increase of "an additional $.40" to standard basic through freight rates of pay are set forth in Appendix 1 which is a part of this Agreement.

(k) Other than standard rates:

(i) Existing basic daily rates of pay other than standard shall be changed, effective as of the dates specified in Sections 1 through 6 hereof, by the same respective percentages as set forth therein, computed and applied in the same manner as the standard rates were determined.

(ii) The differential of $4.00 per basic day in freight and yard service, and 4 per mile for miles in excess of the number encompassed in the basic day in freight service, will be maintained for engineers working without firemen on locomotives on which under the former National Diesel Agreement of 1950 firemen would have been required.

(iii) Daily rates of pay, other than standard, of firemen, conductors, brakemen and flagmen employed in local freight service, or on road switchers, roustabout runs, mine runs, or in other miscellaneous service, on runs of miles equal to or less than the number encompassed in the basic day, which are therefore paid on a daily basis without a mileage component, shall be increased as of the effective dates specified in Sections 1 through 6 hereof, by the same respective percentages as set forth therein, computed and applied in the same manner as provided in paragraph (k)(i) above.

(L) Wage rates resulting from the increases provided for in Sections 1 through 6 and 9 of this Article I, and in Section 1(d) of Article II, will not be reduced under Article II.

Section 9 - General wage Increases for Dining Car Stewards and Yardmasters

(a) Effective November 1, 1985, all basic monthly rates of (excluding cost-of-living allowance) in effect on October 31, 1985, for dining car stewards and yardmasters represented by the United Transportation Union shall be increased by one (1) percent.

(b) Effective January 1, 1986, all basic monthly rates of (excluding cost-of-living allowance) in effect on December 31, 1985, for dining car stewards and yardmasters represented by the United Transportation Union shall be increased by two (2) percent.

(c) Effective July 1, 1986, all basic monthly rates of pay (excluding cost-of-living allowance) in effect on June 30, 1986, for dining car stewards and yardmasters represented by the United Transportation Union shall be increased by one and one-half (1.5) percent.

(d) Effective January 1, 1987, all basic monthly rates of (excluding cost-of-living allowance) in effect on December 31, 1986, for dining car stewards and yardmasters represented by the United Transportation Union shall be increased by an amount equal to two and (2.25) percent.

(e) Effective July 1, 1987, all basic monthly rates of pay (excluding cost-of-living allowance) in effect on June 30, 1987, for dining car stewards and yardmasters represented by the United Transportation Union shall be increased by one and one-half (1.5) percent.

(f) Effective January 1, 1988, all basic monthly rates of (excluding cost-of-living allowance) in effect on December 31, 1987, for dining car stewards and yardmasters represented by the United Transportation Union shall be increased by an amount equal to two and one-quarter (2.25) percent.

A R T 1 C L E 1 (UTU) (Q&A)
General Wage lncreases

Q-1: Would a payment prescribed for a lunch period/meal period violation be considered a duplicate time payment' in application of Section 8 of Article I?

A-1: No. "

* *
* * * * * 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."

We now turn to the question concerning the appropriate method of adjustment of guarantees under various protective agreements or arrangements, in order to reflect the foregoing conclusions. We are persuaded in the light of studied consideration of the record and representations of the parties that there is sufficient reason to recognize that time slips which had been used in determination of the computation of certain guarantees are no longer available. Therefore, except as may otherwise be settled to better advantage by negotiation between a carrier or the carriers and the organization, we find that the following procedure guarantees:

1. Through the use of original time documents or, when such are not available, the use of time documents for the most recent 12-month period immediately prior to November 1, 1985, a determination shall be made as to what percentage of compensation during the 12-month measuring period represents elements of compensation which have been eliminated, reduced, or frozen by the October 31, 1985 National Mediation Agreement.

2. General wage increases made pursuant to the October 31, 1985 National Mediation Agreement shall be reduced by the percentage amount produced by Step 1 in adjusting test period averages.

EXAMPLE

A merger protective agreement provided for a test period average based on earnings January 1, 1964 through December 31, 1964. Employee "A" had earnings during that 12 month period amounting to $12,000. These earnings produced a monthly test period average of $1,000. Sub- sequent general wage increases raised the test period average to $30,000 prior to October 31, 1985.

Time documents related to the earnings of Employee "A" have been discarded by the carrier.

A review of time documents of Employee "A" for the 12- month period November 1, 1984 to October 31, 1985 show that Employee "A" had earned $40,000. A total of $2,000 of such earnings, or 5%, was attributed to elements of pay which have, as a result of the October 31, 1985 National Mediation Agreement, been abrogated, reduced or frozen.

The adjustment to the test period average for Employee "A" as a result of the First General Wage Increase, effective November 1, 1985, would be as follows:

General Wage Increase: 1%

1% times 5% = 1/20% or .05%

1% minus .05% = .95% Adjustment to Test Period Average

Test Period Average: $30,000

Adjustment: ' 95% Increase

Adjustment Test Period Average: $30,285

Similar calculations would be made with respect to the Second through Sixth General Wage Increases.

Should a Carrier or a General Committee of Adjustment for the Organization have good and sufficient reason to be of the opinion that the aforementioned procedures are not appropriate, and if such parties cannot agree upon a method for computing guarantees, the Joint Interpretation Committee may be asked to give consideration to utilization of a different methodology in providing for an adjustment of protective allowances. All such requests must be submitted to the Joint Interpretation Committee in writing and filed not later than sixty (60) calendar days from the date of this Award.

AWARD:

The Question at Issue is disposed of as set forth in the above Findings.

Richard R. Kasher, Arbitrator

Robert E. Peterson, Arbitrator

ARTICLE II-COST OF LIVING ADJUSTMENTS
Section 1 - Amount and Effective Dates of Cost-of-Living Adjustments

(a) The cost-of-living allowance which, on October 31, 1985 is,13 cents per hour, will subsequently be adjusted, in the manner set forth in and subject to all the provisions of paragraphs (e) and (g) below, on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W)" (1967 = 100), u.s. - " Index, all items - unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter referred to as the BLS Consumer Price Index. The first such cost-of-living adjustment shall be made effective November 1, 1985, based (subject to paragraph (e)(i) below) on the BLS Consumer Price Index for March 1985 as compared with the index for September 1984. Such adjustment, and further cost-of-living adjustments which will be made effective as described below, will be based on the change in the BLS Consumer Price Index during the respective measurement periods shown in the following table subject to the exception in paragraph (e)(ii) below, according to the formula set forth in paragraph (f) below as limited by paragraph (g) below:

Measurement Periods Base month	Measurement Month	effective date of Adjustment
September 1984	March 1985	November 1, 1985
March 1985	September 1985	January 1, 1986
September 1985	March 1986	July 1, 1986
March 1986	September 1986	January 1, 1987
September 1986	March 1987	July 1, 1987
March 1987	September 1987	January 1, 1988

(b) While a cost-of-living allowance is in effect, such cost-of-living allowance will apply to straight time, overtime, vacations, holidays and to special allowances in the same manner as basic wage adjustments have been applied in the past, except that such allowance shall not apply to duplicate time payments, including arbitraries and special allowances that are expressed

in time, miles or fixed amounts of money or to mileage rates of pay for miles run in excess of the number of miles comprising a basic day.

(c) The amount of the cost-of-living allowance, if any, which will be effective from one adjustment date to the next may be equal to, or greater or less than, the cost-of-living allowance in effect in the preceding adjustment period.

(d) On June 30, 1988 all of the cost-of-living allowance then in effect shall be rolled into basic rates of pay and the cost-of-living allowance in effect will be reduced to zero. Accordingly, the amount rolled in will not apply to duplicate time payments, including arbitraries and special allowances that are expressed in time, miles or fixed amounts of money, and mileage rates of pay for miles run in excess of the number of miles comprising a basic day.

(e) Cap. (i) In calculations under paragraph (f) below, the maximum increase in the BLS Consumer Price Index (C.P.I.) which will be taken into account will be as follows:

Effective Date   Maximum C.P.I.
Increase
of adjustment   which may be taken
into account

November 1, 1985 4% of September 1984 CPI

January 1, 1986 8% of September 1984 CPI, less the increase from September 1984 to March 1985

July 1, 1986 4% of September 1985 CPI

January 1, 1987 8% of September 1985 CPI, less the increase from September 1985 to March 1986

July 1, 1987 4% of September 1986 CPI

January 1, 1988 8% of September 1986 CPI, less the increase from September 1986 to March 1987

(ii) If the increase in the BLS Consumer Price Index from the base month of September 1984 to the measurement month of March 1985, exceeds 4% of the September base index, the measurement period which will be used for determining the cost-of-living adjustment to be effective the following January will be the twelve-month period from such base month of September; the

increase in the index which will be taken into account will be limited to that portion of increase which is in excess of 4% of such September base index, and the maximum increase in that portion of the index which may be taken into account will be 8% of such September base index less the 4% mentioned in the preceding clause, to which will be added any residual tenths of points which had been dropped under paragraph (f) below in calculation of the cost-of-living adjustment which will have become effective July 1 during such measurement period.

(iii) Any increase in the BLS Consumer Price Index from the base month of September 1984 to the measurement month of September 1985 in excess of 8% of the September 1984 base index, will not be taken into account in the determination of subsequent cost-of- living adjustments.

(f) Formula. The number of points change in the BLS Consumer Price Index during a measurement period, as limited by paragraph (e) above, will be converted into cents on the basis of one cent equals 0.3 full points. (By "0.3 full points it is intended that any remainder of 0.1 point or 0.2 point of change after the conversion will not be counted).

The cost-of-living allowance in effect ,on October 31, 1985 will be adjusted (increased or decreased) effective November 1, 1985 by the whole number of cents produced by dividing by 0.3 the number of points (including tenths of points) change, as limited by paragraph (e) above, in the BLS Consumer Price Index during the measurement period from the base month of September 1984 to the measurement month of March 1985. Any residual tenths of a point resulting from such division will be dropped. The result of such division will be added to the amount of the cost-of-living allowance in effect on October 31, 1985 if the Consumer Price Index will have been higher at the end than at the beginning of the measurement period, and subtracted therefrom only if the index will have been lower at the end than at the beginning of the measurement period and then, only, to the extent that the allowance remains at zero or above.

The same procedure will be followed in applying subsequent adjustments.

(g) Offsets. The amounts calculated in accordance with the formula set forth in paragraph (f) will be offset by the increases provided for in Article I of this Agreement as applied on an annual basis against a starting rate of $12.54 per hour. This will result in the cost-of-living increases, if any, being

subject to the limitations herein described:

(i) Any increase to be paid effective November 1, 1985 is limited to that in excess of 13 cents per hour. Since the formula produces 10 cents per hour for the November 1, 1985 adjustment, no change will be made on that date in the amount of the cost-of-living allowance.

(ii) The combined increases, if any, to be paid as a result of the adjustments effective November 1, 1985 and January 1, 1986 are limited to those in excess of 38 cents per hour.

(iii) Any increase to be paid effective July 1, 1986 is limited to that in excess of 19 cents per hour.

(iv) The combined increases, if any, to be paid as a result of the adjustments effective July 1, 1986 and January 1, 1987 are limited to those in excess of 48 cents per hour.

(v) Any increase to be paid effective July 1, 1987 is limited to that in excess of 20 cents per hour.

(vi) The combined increases, if any, to be paid as a result of the adjustments effective July 1, 1987 and January 1, 1988 are limited to those in excess of 51 cents per hour.

(h) Continuance of the cost-of-living adjustments is dependent upon the availability of the official monthly BLS Consumer Price Index (CPI-W) calculated on the same basis as such Index, except that, if the Bureau of Labor Statistics, U.S. Department of Labor, should during the effective period of this Agreement revise or change the methods or basic data used in calculating the BLS Consumer Price Index in such a way as to affect the direct comparability of such revised or changed index with the CPI-W Index during a measurement period, then that Bureau shall be requested to furnish a conversion factor designed to adjust the newly revised index to the basis of the CPI-W Index during such measurement period.

Section 2 - Application of Cost-of-Living Adjustments

In application of the cost-of-living adjustments provided for by Section 1 of this Article II, the cost-of-living allowance will not become part of basic rates of pay except as provided in Section 1(d). Such allowance will be applied as follows:

(a) For other than dining car stewards and yardmasters, each one

cent per hour of cost-of-living allowance will be treated as an increase of 8 cents in the basic daily rates of pay produced by application of Article I and by Section 1(d) of this Article II. The cost-of-living allowance will otherwise be applied in keeping with the provisions of Section 8 of Article I.

(b) For dining car stewards, each one cent per hour of cost-of-living allowance will be treated as an increase of $1.80 in the monthly rates of pay produced by application of Sections 8 and 9 of Article I and by Section 1(d) of this Article II.

(c) For yardmasters, each one cent per hour of cost-of-living allowance will be treated as an increase of $2.00 in the monthly rates of pay produced by application of Sections 8 and 9 of Article I and by Section 1(d) of this Article II.

ARTICLE III - LUMP SUM PAYMENT

A lump sum payment, calculated as described below, will be paid to each employee subject to this Agreement who established an employment relationship prior to the date of this Agreement and has retained that relationship or has retired or died.

Employees with 2,150 or more straight time hours paid for (not including any such hours reported to the Interstate Commerce Commission as constructive allowances except vacations and holidays) during the period July 1, 1984 through July 31, 1985 will be paid $565.00. Those employees with fewer straight time hours paid for will be paid an amount derived by multiplying $565.00 by the number of straight time hours (including vacations and holidays, as described above) paid for during that period divided by 2,150. * * * * * * * * * * * * * * * * * * *

SIDELETTERS

October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

In accordance with our understanding, this is to confirm that the carriers will make their best efforts to provide the lump sum payment provided for in Article III of this Agreement in a single, separate check no later than December 20, 1985.

If a carrier finds it impossible to make such payments by December 20, 1985, it is understood that such carrier will notify the General Chairmen, in writing, as to why such payments have not been made and indicate when it will be possible to make such payments.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

Fred A. Hardin

* * * * * * * * * * * * * * * * *

Dear Mr. Hardin:

It is understood that the lump sum payment provided in Article III of the Agreement of this date will not be used to offset, construct or increase guarantees in protective agreements or arrangements.

Please indicate your agreement by signi@g your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:
Fred A. Hardin

* *

* *

A R T 1 C L E III (UTU) (Q&A)

Q-l: In totaling an employees "straight time hours', as reported to the ICC, are hours earned in service under agreements other than the UTU to be omitted?

A-l Yes.

* * * * * * * * * *

Q-2: Is the lump sum payment to be allowed to employees who have trans-ferred to a new seniority district, have not lost their

seniority on the previous seniority district but who subsequently (made) an election to retain seniority on only one of the two seniority districts?

A-2: Yes.

* * * * * * * * * *

Q-3: If the answer to the above question is "yes", are all "straight time hours' reported for service on both seniority districts to be included?

A-3: Yes.

* * * * * * * * * *

Q-4: Are lump sum payments applicable to suspended employees as well as employees who are later reinstated with rights unimpaired?

A-4: Yes.

* * * * * * * * * *

Q-5: Would hours reported for service performed as an engineer as well
as a fireman be included?

A-5: Only if the service as an engineer was under an agreement with the UTU.

* * * * * * * * * *

Q-6: If a fireman is furloughed and works part-time as a brakeman, would hours reported for service performed in both crafts be included?

A-6: Yes.

* * * * * * * * * *

Q-7: (a) Is the lump sum payment applicable to an employee who, on the effective date of the UTU Agreement, was working as an

engineer under the BLE Agreement?

(b) If so, are only hours reported for service performed under the UTU Agreement to be included?

A-7: (a) Yes.

(b) Yes.

* * * * * * * * * *

ARTICLE IV - PAY RULES

Section 1 - Mileage Rates

(a) Mileage rates of pay for miles run in excess of the number of miles comprising a basic day (presently 100 miles in freight service and 100 miles for engine crews and 150 miles for train crews in through passenger service) will not be subject to general, cost-of- living, or other forms of wage increases.

(b) Mileage rates of pay, as defined above, applicable to interdivisional, interseniority district, intradivisional and/or intraseniority district service runs now existing or to be established in the future shall not exceed the applicable rates as of October 31,1985. Such rates shall be exempted from wage increases as provided in Section 1(a) of this Article. Car scale and weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

Section 2 - Miles in Basic Day and Overtime Divisor

(a) The miles encompassed in the basic day in through freight and through passenger service and the divisor used to determine when overtime begins will be changed as provided below:

Effective Date of Change	Through Freight Service		Through Passenger Service	
	Miles in Basic day	Overtime Divisor	Miles in Basic Day*	Overtime Divisor
November 1, 1985	102	12.75	153-102	20.4
July 1, 1986	104	13.0	156-104	20.8
July 1, 1987	106	13.25	159-106	21.2
June 30, 1988	108	13.5	162-108	21.6

* The higher mileage numbers apply to conductors and brakemen and the lower mileage numbers apply to engineers and firemen.

(b) Mileage rates will be paid only for miles run in excess of the minimum number specified in (a) above.

(c) The number of hours that must lapse before overtime begins on a trip in through freight or through passenger service is calculated by dividing the miles of the trip or the number of miles encompassed in a basic day in that class of service, whichever is greater, by the appropriate overtime divisor. Thus after June 30, 1988, overtime will begin on a trip of 125 miles in through freight service after 125/13.5 = 9.26 hours or 9 hours and 16 minutes. In through freight service, overtime will not be paid prior to the completion of 8 hours of service.

Section 3 - Conversion to Local Rate

When employees in through freight service become entitled to the local rate of pay under applicable conversion rules, the daily local freight differential (.56 for conductors and engineers and .43 for brakemen and firemen under national agreements) will be added to their basic daily rate and the combined rate will be used as the basis for calculating hourly rates, including overtime. The local freight mileage differential (.56* per mile for conductors and engineers and .43 for brakemen and firemen under national agreements) will be added to the through freight mileage rates, and miles in excess of the number encompassed in the basic day in through freight service will be paid at the combined rate.

Section 4 - Engine Exchange (Including Adding and Subtracting of Units) And Other Related Arbitraries

(a) Effective November 1, 1985, all arbitrary allowances provided to employees for exchanging engines, including adding and subtracting units, preparing one or more units for tow, handling locomotive units not connected in multiple, and coupling and/or uncoupling appurtenances such as signal hose and control cables are reduced by an amount equal to one-third of the allowance in effect as of October 31, 1985.

(b) Effective July 1, 1986, all arbitrary allowances provided to employees for performing work described in paragraph (a) above are reduced by an amount equal to two-thirds of the allowance in effect as of October 31,1985.

(c) Effective July 1, 1987, all arbitrary allowances provided to employees for performing work described in paragraph (a) above are eliminated.

Section 5 - Duplicate Time Payments

(a) Duplicate time payments, including arbitraries and special allowances that are expressed in time or miles or fixed amounts of money, shall not apply to employees whose seniority in train or engine service is established after the date of this Agreement.

(b) Duplicate time payments, including arbitraries and special allowances that are expressed in time or miles or fixed amounts of money, not eliminated by this agreement shall not be subject to general, cost-of-living or other forms of wage increases.

Section 6 - Rate Progression - New Hires

In any class of service or job classification, rates of pay, additives, and other applicable elements of compensation for an employee whose seniority in train or engine service is established after the date of this Agreement will be 75% of the rate for present employees and will increase in increments of 5 percentage points for each year of active service until the new employee's rate is equal to that of present employees. A year of active service shall consist of a period of 365 calendar days in which the employee performs a total of 80 or more tours of duty.
* * * * * * * * * * * * * * * * * * *
* * * * * * * SIDE LETTERS

October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union i 14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This confirms our understanding that the provisions of Article IX - Entry Rates of the August 25, 1978 National Agreement shall no longer apply on railroads parties to this Agreement except, however, that such Article or local rules or practices pertaining to this subject shall continue to apply to employees previously covered by such rules.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,
C. I. Hopkins, Jr.

I agree:
Fred A. Hardin

* *

* ** * * * * * * * * * * *
* * * * ** *

October 31, 1985 Side letter 4

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This will confirm our understanding during the negotiations of the Agreement of this date that the provisions of Article I, Section 8(a), Article II, Section 1(b) and (d), and Article IV, Section 5(a) and (b), relating to the payment of arbitraries and special allowances, shall not apply to special allowances contained in existing local crew consist agreements that contain moratorium provisions prohibiting changes in such payments.

Please indicate your agreement by signing in the space and provided below.

Very truly yours,
C. I. Hopkins, Jr.

I agree:
Fred A. Hardin

* *
* * * * * * *

ARTICLE IV (UTU) Q & A
Pay Rules
Section 1

Q-1: Is the over-mile rate for interdivisional runs already in effect frozen?

A-1: Yes, at the rate of pay in effect on October 31, 1985.

* * * * * * * * * *.

Q-2: Are local or system agreements dealing with interdivisional runs cancelled or have the over-miles just been frozen?

A-2: Such agreements are not cancelled; however, in application of Section 1(b) of Article IV, payments for miles run in excess of the number of miles encompassed in the basic day are frozen at the rate of pay in effect on October 31, 1985 for the first 100 miles or less.

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ARTICLE IV (UTU)
Pay Rules
Section 2 - Miles in Basic Day and Overtime Divisor

Q-1: Is the 102/108 mile day applicable to locals, work trains or road switchers?

A-1: No.

* * * * * * * * * *

Q-2: Under an existing agreement covering pooling of cabooses, employees are allowed an additional .01 per mile, with a minimum of $1.00 for the run. On a run of 120 miles the payment would be $1.20 and on a run of 90 miles the payment would be $1.00. Under the provisions of Section 2(a) would the payment for the 90 mile run be $1.02?

A-2: No.

* * * * * * * * * * "

Q-3: In a commuter operation, the short turnaround passenger service rule provided in the November 21, 1947 ORC-BRT Agreement is utilized, i.e., "no single trip of which exceeds 80 miles". Are the provisions of Section 2(a) of Article IV applicable to this operation?

A-3: No, the provisions of Section 2(a) are applicable to through passenger service and are not applicable to the short turnaround

passenger service operation described.

* * * * * * * * * *

Q-4: Article IV, Section 2(c) illustrates how to compute the number of hours of overtime, if any, associated with a given through freight or through passenger run. How is the payment for those hours to be computed?

A-4: The overtime payment can be computed in terms of hours or miles with identical results. On an hourly basis, the number of hours determined by the Article IV, Section 2(c) calculation will be multiplied by the basic day rate and by the .1875 factor (which results from multiplying by the punitive factors of 1.5 and dividing by 8 hours). If the hours are converted to miles by multiplying the number of hours by the current overtime division (12.5, 12.75, 13, 13.25 or 13.5) and by the 1.5 punitive factors, then the results will be multiplied by mileage rate derived by dividing the basic day rate by the number of miles encompassed by the basic day (100, 102,104,106 or 108).

As an example, a trip of 125 miles made in November 1985, and completed in 11 hours would go on overtime after 9.8 hours (125 divided by 12.75); thus 1.2 overtime hours would be due. At a basic day rate of $96.00, the overtime pay on an hourly basis would be $21.60 (1.2 hours * 96.00 * .1875). Converted to miles, the 1.2 overtime hours @ 22.95 miles (1.2 hours * 12.75 mph * 1.5). Multiplying rate of .9412 (96.00 divided by 102 miles) also produces the $21.6O result (1.2*94.12x .19125).

* * * * * * * * * *

Q-5: How shall non-duplicate time payments expressed in miles be paid following changes in miles in basic day pursuant to Section 2? (e.g.,50 miles runaround rule.)

A-5: Where the obvious intent of the parties was to apply a percentage of a basic day (e.g., 50 miles equals 50%), such intent shall be continued (50% equals 51, 52, 53 or 54 miles depending on effective date of change.)

* * * * * * * * * *

Q-6: Are road employees who are confined to runs which are paid for on a daily basis without a mileage component (basic day) entitled to holiday pay?

A-6: Yes, if they meet the other qualifying requirements.

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ARTICLE IV (UTU)
Pay Rules
Section 4

Q-1: Under a local agreement, employees in a certain territory are currently paid an engine arbitrary of one hour for picking up engines. Is this agreement still applicable?

A-1: Yes, except for the pay provisions. The one hour arbitrary will be eliminated over the period described in Sections 4(a), (b) and (c) of Article IV.

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ARTICLE IV (UTU)
Pay Rules
Section 5 - Duplicate Time Payments

Q-1: Is payment to a road crew of additional compensation for violation of the road-yard rule considered a duplicate time payment?

A-1: No.

* * * * * * * * * *

Q-2: Where passenger trains are turned, is a payment currently in effect frozen or eliminated?

A-2: Assuming that this question relates to Sections 5(a) and (b) of Article IV, dealing with duplicate time payments, such arbitraries are frozen at rates in effect on October 31, 1985 for existing employees and are not payable to employees establishing seniority in a UTU represented craft after the effective date of the agreement. If the locomotive only is turned, however, agreements requiring pay for turning locomotives are superseded by the provisions of Article VIII, Section 3(a)2 and/or (b)2, and the arbitrary is eliminated.

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Q-3: Is held-away-from-home terminal time to be paid for at the rate of pay in effect on October 31, 1985?

A-3: No. It is payable at the current rates.

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ARTICLE IV (UTU)
Pay Rules
Section 6 - Rate Progression - New Hires

Q-1: An employee, hired on December 1, 1985, works 6 tours of duty per month and, accordingly, on December 1, 1986 he will have worked 72 tours of duty. If he continues to work 6 tours of duty per month and on January 10, 1987 he will have worked his 80th tour of duty, will he be entitled to an increase to 80% of the regular rate effective January 11, 1987?

A-1: Yes.

* * * * * * * * * *

Q-2: An employee hired subsequent to the effective date of the UTU Agree-ment performs his 79th tour of duty on the 365th day following his date of hire.

(a) When would this employee receive a 5% increase in rate progression?

(b) Would a new 365/80 qualifying period then begin?

A-2: (a.) After performance of the 80th tour of duty.

(b) Yes.

* * * * * * * * * *

Q-3: An employee hired subsequent to the effective date of the UTU Agreement attains his 80th tour of duty 240 days after entering service. Would this employee receive the 5% increase at that time or at the expiration of 365 calendar days?

A-3: At the expiration of 365 calendar days.

* * * * * * * * * *

Q-4: Is it intended that the 365 calendar day period be continuous without interruption, such as furlough, injury, illness, suspension resulting from disciplinary action, etc?

A-4: Yes, however, a subsequent 365 calendar day period for purposes of this rule would not commence until the involved employee attains his 80th tour of duty.

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Q-5: An employee hired subsequent to the effective date of the UTU Agreement performs his first tour of duty on January 1, 1986 and completes his 80th tour of duty on January 5, 1987. Would this employee receive a 5% increase after completion of his 80th tour of duty on January 5, 1987 or will he have forfeited the increase by failing to make the 80 tours of duty within the 365 day period, January 1, 1986 -January 1, 1987?

A-5: The 5% increase would be applicable following the 80th tour of duty, i.e., as of January 6, 1987.

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Q-6: If an employee subject to the entry rate provisions of this Article is disciplined, and such discipline is subsequently set aside with pay for time lost, will such pay for time lost be credited toward the 80 tours of duty in a 365 calendar day period?

A-6: Yes.

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Q-7: In application of Section 6, when an engine service employee is placed on the bottom of the appropriate ground service roster in compliance with Section 2, Establishing Brakeman Seniority, of Article XIII - Firemen or train service employee transfers to engine service on or after November 1, 1985, is such employee considered a new employee and subject to the entry rate provisions?

A-7: No. This section is intended to apply solely to "new hires" who had not established seniority in train or engine service on that railroad.

* * * * * * * * * *

Q-8: If an employee does not have SO tours of duty at the end of a 365 day period, will the 365 days be extended until 80 tours are accumulated and at that point a new 365 day period would commence?

A-8: Yes.

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

UNITED TRANSPORTATION UNION
AND
NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTIONS AT ISSUE:

ARTICLE IV - PAY RULES :

1. Are the changes in basic day miles in Section 2 applicable to:

(a) existing interdivisional runs?

(b) new interdivisional runs established under Article IX?"

FINDINGS

Article IV, Section 2, Miles in Basic Day and Overtime Divisor, stipulates that the miles encompassed in the basic day in through freight and through passenger service and the divisor used to determine when overtime begins will be changed on certain effective dates, i.e. , November 1, 1985, July 1, 1986, July 1, 1987, and June 30, 1988. Further, that mileage rates will be paid only for miles run in excess of the minimum number specified as being effective commencing with each of the aforementioned dates, ranging from 102 to 108 miles.

The October 31, 1985 National Mediation Agreement gives special recognition to mileage rates of pay applicable to interdivisional service. In this respect, Section 1, Mileage Rates, of Article IV provides as follows in subsections (a) and (b) :

"(a) Mileage rates of pay for miles run in excess of the number of miles comprising a basic day (presently 100 miles in freight service and 100 miles for engine crews and 150 miles for train crews in through passenger service) will not be subject to general, cost-of-living or other forms of wage increases.

(b) Mileage rates of pay, as defined above, applicable to interdivisional, interseniority district, intradivisional and/or intraseniority district service runs now existing or to be established in the future shall not exceed the applicable rates as of October 31, 1985. Such rates shall be exempted from wage

increases as provided in Section 1(a) of this Article. Car scale and weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision."
In this same regard, it is significant that in setting forth the Conditions or guidelines to be followed for carriers seeking to establish interdivisional service pursuant to the October 31, 1985 National Mediation Agreement, that Section 2 (b) of Article IX states:

"(b) All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on October 31, 1985 by the number of miles encompassed in the basic day as of that date. Car scale and weight-on- drivers additives will apply to mileage rates calculated in accordance with this provision. "

It is also significant that in Letter No. 10 to the October 31, 1985 National Mediation Agreement, it was agreed as follows with respect to interdivisional service:

"This confirms our understanding with respect to Article IX, Interdivisional Service of the Agreement of this date.

On railroads that elect to preserve existing rules or practices with respect to interdivisional runs, the rates paid for miles in excess of the number encompassed in a basic day will not exceed those paid for under Article IX, Section 2(b) of the Agreement of this date.

Please indicate your agreement by signing in the space provided below. "

In view of the above considerations it must be concluded that except where special recognition was given by the parties to inter- divisional service that it was intended there be complete uniformity relative to the application of all pay rules to inter-divisional service as well as with through freight service.

Accordingly, since interdivisional service was not specifically excluded from application of Section 2 of Article IV that changes in basic day miles on each of the effective dates set forth in such Section 2 are applicable to both existing and new inter-divisional runs.

AWARD:

The Questions at Issue are answered in the affirmative.

Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator Washington, DC March 20, 1987

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

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTIONS AT ISSUE:

ARTICLE IV - PAY RULES:

"2. Did Section 2(c) amend or alter the method of computing overtime:

(a) under existing interdivisional run agreements?

(b) for new interdivisional runs established under Article IX?"

FINDINGS:

Section 2(c) of Article IV provides that the number of hours that must lapse before overtime begins on a trip in through freight service is calculated by dividing the miles of the trip or the number of miles encompassed in a basic day in that class of service, whichever is greater, by the appropriate overtime divisor and that in through freight service, overtime will not be paid prior to the completion of eight (8) hours service.

As indicated in our Findings to Question No. 1 regarding Article IV, the October 31, 1985 National Mediation Agreement gives special recognition in certain instances to mileage rates of pay applicable to interdivisional service. For example, Section 1(b) of Article IV deals with mileage rates for miles run in excess of the number of miles comprising a basic day as applicable to interdivisional or related service and provides that such rates for existing runs or future runs shall not exceed the applicable rates as of October 31, 1985.

Since we are unable to discern any exemption for interdivisional service from that which would prevail for all through freight service relative to the number of hours that must lapse before overtime begins on a trip, the Questions at Issue must be

answered in the affirmative with respect to both existing and newly established interdivisional service, except as provided below.

In the light of certain argument advanced at hearings in consideration of this dispute, we believe it appropriate to hold that special overtime rules in existing interdivisional service agreements that are more favorable to 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.

The above findings are not intended to infringe upon those conditions which shall govern establishment of interdivisional service made in pursuance of Article IX, Interdivisional Service, of the October 31 1985 National Mediation Agreement, or more especially, Section 2(f), Conditions, of such Article IX whereby it is provided:

"The foregoing provisions (a) through (e) do not preclude the parties from negotiating on other terms and conditions of work."

Nor do we here pass judgment upon the scope of arbitration permissible under Article IX, Section 4, Arbitration, whereby it is provided:

"In the event the carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 30 days after arbitration is requested by the carrier. The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above."

AWARD

The Questions at Issue are answered as set forth in the above Findings.

Richard R. Kasher, Arbitrator   Robert E. Peterson, Arbitrator
Washington, DC March 20, 1987

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

UNITED TRANSPORTATION UNION
AND
NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE :

ARTICLE IV - PAY RULES :

"3. Are runaround payments, allowed under previous agreements to employees on duty and under pay, considered frozen or eliminated as duplicate time payments under Section 5?"

FINDINGS:

The terminology, "duplicate time payments," as contained in Section 5 of Article IV, must be interpreted to mean the twofold or double payment to an employee for a like period of time. We do not believe that runaround payments fall within such definition.

Runaround payments generally represent penalty, rather than duplicate time payment. They usually involve situations which have caused an employee to sustain a loss of compensation or time as the result of a carrier having permitted or found need to have other than the employee who stood for an assignment work a job. The penalty payment takes into consideration the impact a runaround may have on an employee's further standing for work at the location where the runaround occurs as well as at other locations where, as a consequence of a runaround, the affected employee may lose additional compensation or time as the result of other employees thereafter standing for work out of such locations ahead of the affected employee.

Therefore, a runaround payment is properly considered a penalty and not a duplicate payment subject to Section 5 of Article IV.

AWARD:

The Question at Issue is answered in the negative.

Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator Washington, DC March 20, 1987

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ARTICLE V - FINAL TERMINAL DELAY, FREIGHT SERVICE

Section 1 - Computation of Time

In freight service all time, in excess of 60 minutes, computed from the time engine reaches switch, or signal governing same, used in entering final terminal yard track where train is to be left or yarded, until finally relieved from duty, shall be paid for as final terminal delay; provided,that if a train is deliberately delayed between the last siding or station and such switch or signal, the time held at such point will be added to any time calculated as final terminal delay.

Section 2 - Extension of Time

Where mileage is allowed between the point where final terminal delay time begins and the point where finally relieved, each mile so allowed will extend the 60 minute period after which final terminal delay payment begins by the number of minutes equal to 60 divided by the applicable overtime divisor (60/12.5 = 4.8;60/12.75 = 4.7; 60/13 = 4.6; 60/13.25 = 4.5; 60/13.5 = 4.4, etc.).

Section 3 - Payment Computation

All final terminal delay, computed as provided for in this Article, shall be paid for, on the minute basis, at one-eighth (1/8th) of the basic daily rate in effect as of October 31, 1985, according to class of service and engine used, in addition to full mileage of the trip, with the understanding that the actual time consumed in the performance of service in the final terminal for which an arbitrary allowance of any kind is paid shall be deducted from the final terminal time under this Article. The rate of pay for final terminal delay allowance shall not be subject to increases of any kind.

After road overtime commences, final terminal delay shall not apply and road overtime shall be paid until finally relieved from duty.

NOTE: The phrase relieved from duty" as used in this Article includes time required to make inspection, complete all necessary reports and/or register off duty.

Section 4 - Multiple Trips

When a tour of duty is composed of a series of trips, final terminal delay will be computed on only the last trip of the tour of duty.

Section 5 - Exceptions

This Article shall not apply to pusher, helper, mine run, shifter, roustabout, transfer, belt line, work, wreck, construction, road switcher or district run service. This Article shall not apply to circus train service where special rates or allowances are paid for such service.

NOTE: The question as to what particular service is covered by the designations used in Section 5 shall be determined on each individual railroad in accordance with the rules and practices in effect thereon.

Section 6 - Local Freight Service

In local freight service, time consumed in switching at final terminal shall not be included in the computation of final terminal delay time.

This Article shall become effective November 1, 1985 except on carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before such date.

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SIDE LETTER

CHARLES I. HOPKINS Jr.
October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This refers to Article V of the Agreement of this date concerning the final terminal delay rule, particularly our understanding with respect to the use of the term 'deliberately " delayed" in Section 1 of that Article.

During the discussions that led to our Agreement, you expressed concern with situations where a crew was instructed to stop and was held outside the terminal between the last siding or station and the point where final terminal delay begins and there was no operational impediment to the crew bringing its train into the terminal; i.e., the train was deliberately delayed by yard supervision. Accordingly, we agreed that Section 1 would comprehend such situations.

On the other hand, the carriers were concerned that the term deliberately delayed" not be construed in such a manner as to include time when crews were held between the last siding or station and the point where final terminal delay begins because of typical railroad operations, emergency conditions, or appropriate managerial decisions. A number of examples were cited including, among others, situations where a train is stopped: to allow another train to run around it; for a crew to check for hot boxes or defective equipment; for a crew to switch a plant; at a red signal (except if stopped because of a preceding train which has arrived at final terminal delay point and is on final terminal time, the time of such delay by the crew so stopped will be calculated as final terminal delay); because of track or signal maintenance or construction work; to allow an outbound train to come out of the yard; and because of a derailment inside the yard which prevents the train held from being yarded on the desired track, e.g., the receiving track. We agreed that Section 1 did not comprehend such conditions.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours
C. I. Hopkins, Jr.

I agree:
Fred A. Hardin

* *

QUESTIONS AND ANSWERS

ARTICLE V (UTU)
Final Terminal Delay, Freight Service
Section 3 - Payment Computation

Q-1: Train (A) arrived at the point where computation of final terminal delay time commenced at 9:00 P.M. Road overtime commenced at 10:10 P.M. and the crew was relieved from duty at 10:30 P.M. under these circumstances, would 10 minutes final

terminal delay and 20 minutes road overtime be the proper payment?

A-1: Yes.

* * * * * * * * * *

Q-2: when a crew commences final terminal delay and then overtime becomes applicable, is the mileage stopped when the final terminal delay payments stop or does it continue while overtime is applicable?

A-2 Article v does not change existing agreements on the payment of mileage. Mileage does not stop when pay for final terminal delay stops due to the overtime threshold being reached; however, overtime does not start until the time on duty exceeds the miles run divided by the appropriate overtime divisor.

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ARTICLE V (UTU)
Final Terminal Delay, Freight Service
Section 5 - Exceptions

Q-1 What is the definition of "district run service" as used in Section 5?

A-1: Road Switcher service as defined in the May 25, 1951 and May 23, 1952 National Agreements.

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Q-2: Does Article V apply to conductor-pilots on detoured trains?

A-2: Depends on local rule covering pilots.

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

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:
ARTICLE V - FINAL TERMINAL DELAY, FREIGHT SERVICE :

"1. Does Article V supersede pre-existing rules or practices specifying the points where computation of final terminal delay time commences when a train enters its final terminal?"

FINDINGS

Essentially, the issue here in dispute arises under Section 1 of Article V of the October 31, 1985 National Mediation Agreement. This section reads as follows: "

Section 1 - Computation of Time

In freight service all time, in excess of 60 minutes, computed from the time engine reaches switch, or signal governing same, used in entering final terminal yard track where train is to be left or yarded, until finally relieved from duty, shall be paid for as final terminal delay; provided, that if a train is deliberately delayed between the last siding or station and such switch or signal, the time held at such point will be added to any time calculated as final terminal delay.

It is clearly evident that in an effort to establish a uniform rule the parties provided for adoption of language similar to that contained in Section 13 of the August 11, 1948 National Agreement; the exception being an increase from 30 to 60 minutes for the "grace period" after which final terminal delay is computed.

The August 11, 1948 Agreement covered employees then represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen & Enginemen, and the Switchmen's Union of North America. The latter two organizations merged into the United Transportation Union in 1969 with the Brotherhood of Railroad Trainmen and the Order of Railway Conductors & Brakemen.

Both the Carriers and the Organization advance argument in support of their respective contentions that they were attaining varied application of the contract language.

In adopting the provisions of Section 13 of the August 11, 1948 National Agreement we think both the Carriers and the Organization knew or should have known that numerous disputes had been placed before a National Disputes Committee under the August 11, 1948 Agreement. They must, therefore, have known that it would not be unreasonable to anticipate that decisions of such Disputes Committee would serve as the basis for resolution of disputes arising from similar language in the October 31, 1985 National Mediation Agreement.

Therefore, as concerns certain arguments advanced in the instant dispute, it is significant that in several of its decisions the August 11, 1948 Disputes Committee had denied claims for commencement of final terminal delay at points in advance of the switch, or signal governing same, used in entering final terminal yard track where a train is to be left or yarded. It is also worthy of note that in Decision Nos. E-21-E&F and E-32-F that the partisan members of the Disputes Committee, without the assistance of a neutral referee, agreed that provisions in the then current schedule agreement and practices with respect to the points at which final terminal delay commenced were superseded by Section 13 of the August 11, 1948 National Agreement.

Consequently, and absent supporting language to show that employees had the right to retain their old final terminal delay rules or practices, it must be held that Section 1 of Article V of the October 31, 1985 National Mediation Agreement did have the effect of superseding pre-existing rules or practices specifying the points where computation of final terminal delay time commences.

The conclusion stated above would effectively answer the Question at Issue. However, since it is evident from discussions that there remains disagreement as to the specific meaning and intent of that terminology contained in Section 1 of Article V of the October 31, 1985 National Mediation Agreement whereby it is said that final terminal delay is computed from the time the engine "reaches switch, or signal governing same, used in entering final terminal yard track where train is to be left or yarded," we will also address that particular issue.

As noted above, it was the intent of the parties to establish a uniform rule for all employees in engine and train service. Therefore, it is appropriate to give consideration to the manner in which the final terminal delay issue was subsequently resolved by the Carriers with their employees represented by the Brotherhood of Locomotive Engineers.

In addressing the final terminal delay issue in an Arbitration Award, which Award was made pursuant to a National Mediation Board Arbitration Agreement entered into between the Carriers and the Brotherhood of Locomotive Engineers on April 15, 1986, the Arbitration Board, with Rodney E. Dennis serving as chairman and neutral member, among other things, said:

"3. Final Terminal Delay. In the tentative settlement, the question of the point at which final terminal delay (FTD) would begin was left to arbitration, and a grace period of 60 minutes

was established. In this proceeding, the carriers have contended that this Board should fix the appropriate point, and that such point should be identical to the FTD point established in the October 31, 1985 UTU Agreement."

In their tentative agreement, the parties exhibited a desire to establish, through arbitration, a uniform national definition of the point at which FTD would commence. The Board believes such a rule would serve the interests of both the carriers and the organization. Engineers working under separate contracts would be placed on the same footing. The burdens now placed on certain railroads by local FTD rules that are more restrictive than those existing on other railroads would be removed, facilitating their ability to compete. These considerations have convinced this Board that a national FTD rule is appropriate and should be included in our Award. In fashioning such a rule, we begin by recognizing the underlying purpose of the rule, namely the encouragement of prompt yarding of trains arriving at their final terminal yards. Thus, as a logical matter FTD should not commence until the train arrives at the switch, or signal governing same, used in entering the yard where the train is to be left or yarded. Under such a formulation the concern addressed by the rule, avoidance of undue delay in the yarding of trains due to unnecessary yard delays, would be served. Based on our review of the record, such a rule would not be a radical break with existing practice. The carriers have produced evidence indicating that (i) a majority of agreements covering a majority of employees provide that FTD shall begin either at the main track switch to the yard or the switch to the track where the train is to be left; and (ii) almost 75 percent of all crew trips have FTD points located within a mile of such switches. Accordingly, the tentative settlement's FTD provision is amended to provide that FTD shall be computed from the time engine reaches the switch, or signal governing same, used in entering final terminal yard where train is to be left or yarded until finally relieved from duty, provided, that if a train is deliberately delayed (as defined in a letter attachment) between the last siding or station and such switch or signal, the time held at such point will be added to any time calculated as FTD. The grace period shall remain at 60 minutes as provided in the tentative settlement. " (Emphasis Added)

Thus, by reason of the above Arbitration Award the provisions of Article 13 of the August 11, 1948 Agreement, as applicable to employees represented by the Brotherhood of Locomotive Engineers, were amended to provide not only for a 30-minute extension of the grace period, but to also establish that the point at which final terminal delay is to be computed would be from the time the

engine reaches "the switch used in entering the final yard" within a terminal where the train is to be left or yarded until finally relieved from duty.

In consideration of the above record, we believe it may properly be concluded that Section 1 of Article V of the October 31, 1985 National Mediation Agreement is subject to interpretation in a manner similar to that which has prevailed with respect to the Carriers' employees represented by the Brotherhood of Locomotive Engineers in keeping with: (1) The desire expressed by the Carriers to the Arbitration Board that the final terminal delay point for such employees be identical to the final terminal delay point established for other employees in the October 31, 1985 (UTU) National Mediation Agreement; and, (2) The apparent belief of the Arbitration Board in the Carriers' dispute with the Brotherhood of Locomotive Engineers that it was amending the tentative settlement which had previously been reached between the Carriers and the Brotherhood of Locomotive Engineers with respect to final terminal delay so as to have it conform with the October 31, 1985 National Mediation Agreement and thereby have a common national final terminal delay rule for all engine and train service employees.

AWARD:

The Question at Issue is disposed of as set forth in the above Findings.
Richard R. Kasher, Arbitrator Robert E. Peterson,
Arbitrator Washington, DC March 20, 1987

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

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:
ARTICLE V - FINAL TERMINAL DELAY, FREIGHT SERVICE:

"2. At what point does computation of final terminal delay begin for crews who do not dispose of their trains on a yard track in the final terminal, e.g. , on a main line or running track?"

FINDINGS

Article V, Final Terminal Delay, Freight Service, of the October 31, 1985 National Mediation Agreement does not address the point at which final terminal delay is to be computed for crews who do not disposé of their trains on a yard track in the final terminal, e.g., on a main line or running track.

However, it is clear based upon the arguments presented to this Board that it was the intent of the parties to make the yarding of trains on a main line or running track subject to final terminal delay payments as specified in Article V of the October 31, 1985 National Mediation Agreement.

The Carriers' Conference Committee maintains that it was intended that the computation of final terminal delay would commence at the location and time a train stops on the main line or running track. The Organization, on the other hand, principally argues that final terminal delay should commence at the time the engine of the train reaches the entrance to the terminal.

Article V of the October 31, 1985 National Mediation Agreement, as previously recognized in determination of an earlier question at issue involving final terminal delay, is patterned after a like rule in the August 11, 1948 National Agreement. The rule in the 1948 National Agreement has been apparently interpreted and applied on various properties as having trains yarded on a main line or running track subject to final terminal delay payments, albeit at diverse points on individual carriers.

Therefore, in here making a determination on the Question at Issue, we shall recognize the principle that a practical construction of a rule may be established by a well defined practice and find that it was the intent of the parties to have trains yarded on a main line or running track be subject to Article V of the October 31, 1985 National Mediation Agreement.

In the light of the above determinations, and in keeping with a consistent interpretation and application of Article V of the October 31, 1985 National Mediation Agreement, it will be held that computation for final terminal delay begin 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.

AWARD
The Question at Issue is disposed of as set forth in the above Findings.

Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator
Washington DC March 20, 1987
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JOINT INTERPRETATION COMMITTEE
ARTICLE XVI
NATIONAL MEDIATION AGREEMENT OF OCTOBER 31, 1985

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:
ARTICLE V - FINAL TERMINAL DELAY, FREIGHT SERVICE:

"3. Does this rule supersede pre-existing rules governing the payment of final terminal delay:

(a) in existing interdivisional service;

(b) in interdivisional service established under Article IX?"

FINDINGS

Nothing contained in Article V - Final Terminal Delay, Freight Service, of the October 31, 1985 National Mediation Agreement 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 would apply to all other through freight service.

We are not persuaded, as urged by the Organization, that because it was stipulated in Section 5 of Article IX, Interdivisional Service, that interdivisional service in effect on the date of the Agreement (October 31, 1985) was not affected by Article IX, that the meaning and intent of this particular provision extends to application of Article V.

Essentially, it appears that the intent of Section 5 of Article IX was as stated by the Carriers to the Study Commission in its Explanation of Carriers' Proposal, which read:

"The proposed rules would leave the present interdivisional service rules intact as to notice requirements, employee protection, etc. All that they [the proposed rule changes] would do is to bring interdivisional service into line with the rest of road service as regards pay and work rules. This would make interdivisional service cost-neutral and thus encourage

realization of the operating efficiencies and service improvements that such service can provide. " (p. 17)

Further, while Section 5, Exceptions, of Article V of the October 31, 1985 Agreement sets forth certain services to be exempt from such Article V, it fails to mention interdivisional service as one of those exceptions. In its entirety, Section 5, reads as follows:

"This Article [V - Final Terminal Delay, Freight Service] shall not apply to pusher, helper, mine run, shifter, roustabout, transfer, belt line, work, wreck, construction, road switcher or district run service. This Article shall not apply to circus train service where special rates or allowances are paid for such service."

AWARD:
The Question at Issue is answered in the affirmative.

Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator
Washington, DC March 2 0, 1987
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JOINT INTERPRETATION COMMITTEE
ARTICLE XVI
NATIONAL MEDIATION AGREEMENT OF OCTOBER 31, 1985

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:
ARTICLE V - FINAL TERMINAL DELAY, FREIGHT SERVICE:

"4. At what point does computation of final terminal delay begin for crews who deliver their over-the-road train to a connecting carrier in pursuance of the 'solid train' provisions of Article VII of the January 27, 1972 National Agreement?"

FINDINGS

There is nothing to suggest from the language of Article V, Final Terminal Delay, Freight Service, of the October 31, 1985 National Mediation Agreement that the parties intended to leave the question of where computation of final terminal delay would commence with respect to the delivery of solid over-the-road trains to a connecting carrier as unconsidered, unresolved, or subject to some other agreement.

In arriving at such a conclusion it is recognized that Section 5, Exceptions, of Article V makes no mention of interchange service in providing for certain enumerated services to be exempt from such Article V. Section 5, in its entirety, reads:

"This Article [V - Final Terminal Delay, Freight Service] shall not apply to pusher, helper, mine run, shifter, roustabout, transfer, belt line, work, wreck, construction, road switcher or district run service. This Article shall not apply to circus train service where special rates or allowances are paid for such service."

In this same regard, it is likewise significant that Article VII, Interchange, of the January 27, 1972 National Agreement gives no special recognition to the location or establishment of the point at which final terminal delay was to begin to accrue for crews delivering solid over-the-road through freight trains to a connecting carrier. Moreover, as indicated by the following agreed-upon Question and Answer, it is evident that Article VII of the January 27, 1972 Agreement was not intended to be the contractual vehicle by which such point was established:

"Q-7: Does Article VII contemplate the elimination or modification of initial and final terminal delay rules?

A-7: No. "

Since the purpose of Article V of the October 31, 1985 Agreement was to remove restrictions contained in any existing rules or recognized practices so as to establish a uniform national rule, it must be concluded 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 of yarded, except in this instance it would be the yard of a connecting carrier.

AWARD:
The Question at Issue is answered as set forth in the above Findings.
Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator
Washington, DC March 20, 1987

ARTICLE VI - DEADHEADING

Existing rules covering deadheading are revised as follows:
Section 1 - Payment when Deadheading and Service Are Combined

(a) Deadheading and Service may be combined in any manner that traffic conditions require, and when so combined employees shall be. paid actual miles or hours on a continuous time basis, with not less than a minimum day, for the combined service and deadheading. However, when deadheading from the away-from-home terminal to the home terminal is combined with a service trip from such home terminal to such away-from-home terminal and the distance between the two terminals exceeds the applicable mileage for a basic day, the rate paid for the basic day mileage portions of the service trip and deadhead shall be at the full basic daily rate.

Section 2 - payment For Deadheading Separate From Service

When deadheading is paid for separate and apart from service:

(a) For Present Employees*

A minimum day, at the basic rate applicable to the class of service in connection with which deadheading is performed, shall be allowed for the deadheading, unless actual time consumed is greater, in which event the latter amount shall be allowed.

(b) For New Employees**

Compensation on a minute basis, at the basic rate applicable to the class of service in connection with which deadheading is performed, shall be allowed. However, if service after deadheading to other than the employee's home terminal does not begin within 16 hours after completion of deadhead, a minimum of a basic day at such rate will be paid. If deadheading from service at other than the employee's home terminal does not commence within 16 hours of completion of service, a minimum of a basic day at such rate will be paid.

A minimum of a basic day also will be allowed where two separate deadhead trips, the second of which is out of other than the home terminal, are made with no intervening service performed. Non-service payments such as held-away-from-home terminal allowance will count toward the minimum of a basic day provided in this Section 2(b).

* Employees whose seniority date in a craft covered by this Agreement precedes the date of this Agreement.

** Employees whose earliest seniority date in a craft covered by this Agreement is established after the date of this Agreement.

Section 3 - Application

Deadheading will not be paid where not paid under existing rules.

This Article shall become effective November 1, 1985 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before such date.

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SIDE LETTER #6

EXAMPLES OF APPLICATION OF DEADHEAD RULE, ARTICLE VI

The following examples illustrate application of the rule to all employees regardless of when their seniority date in train or engine service was established, except where specifically stated otherwise:

1. What payment would be due a trainman who performed road service on a train of 81 cars from A, the home terminal, to B, the away-from-home terminal, a distance of 170 miles, and deadheaded from B to A, with the service and deadhead combined between A-B-A? "

A. A minimum day and 70 over-miles for the service and a minimum day and 70 over-miles for the deadhead, all at the 81-105 car rate, with service and deadhead combined.

2. What would be the payment under Question 1 if the distance between A and B were 75 miles?

A. A minimum day and 50 over-miles, all at the 81-105 car rate. "

3. What payment would be due a trainman who performed road service on a train of 81 cars from A to B, a distance of 170 miles, taking rest at B, and then being deadheaded separate and apart from service from B to A, with the deadhead consuming 8 hours?

A. A minimum day and 70 over-miles, all at the 81-105 car rate for the service trip from A to B, and a minimum day at the basic rate (no car count) applicable to the class of service in connection with which the deadheading is performed.

4. What payment would be due a trainman who performed road service on a train of 81 cars from A to B, a distance of 170 miles, taking rest at B, and then deadheading separately from service B to A, with the deadhead being completed in 10 hours?

A. He would be paid a minimum day and 70 over-miles, all at the 81-105 car rate for the service trip from A to B, and 10 hours straight time rate of pay at the basic rate (no car count) applicable to the class of service in connection with which the deadheading is performed.

5. A trainman operates a train from his home terminal, point A,to the away-from-home terminal, point B, a distance of 170 miles. Upon arrival at the away-from-home terminal, he is ordered to deadhead, separate and apart from service, to the home terminal. The time deadheading is 5 hours. what payment is due?

A. A minimum day plus 70 over-miles for service. A minimum day for deadhead if employees' seniority antedates the date of this Agreement; otherwise, 5 hours.

6. Would at least a minimum day at the basic rate (no car count) applicable to the class of service in connection with which the deadheading is performed be paid when a deadhead is separate and apart from service and the actual time consumed is the equivalent of a minimum day or less?

A. Yes, for employees whose seniority antedates the date of the Agreement. Actual time will be paid to others.

7. A trainman is called to deadhead from point A to point B, a distance of 50 miles, to operate a train back to point A. He is instructed to combine deadhead and service. Total elapsed time is 7 hours, 30 minutes. What payment is due?

A. A minimum day.

8. A trainman is called to deadhead from point A to point B, 1 a distance of 50 miles, to operate a train from point B to point C, a distance of 75 miles. He is instructed to combine deadhead and service. Total elapsed time is 10 hours. What payment is due?

A. a minimum day plus 25 over-miles.

9. A trainman operates a train from point A to point B, a distance of 50 miles. He is ordered to deadhead back to point A, service and deadhead combined. Total elapsed time, 8 hours, 30 minutes. What payment is due?

A. A minimum day plus 30 minutes overtime.

10. A trainman operates a train from his home terminal, point A, to the away-from-home terminal, point B, a distance of 275 miles. After rest, he is ordered to deadhead, separate and apart from service, to the home terminal. Time deadheading is 9 hours, 10 minutes. What payment is due?

A. A minimum day plus 175 over-miles for service, 9 hours, 10 minutes straight time for the deadhead.

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The following examples illustrate the application of the rule to employees whose earliest seniority date in a craft covered by this agreement is established after the date of this Agreement:

1. A trainman is called to deadhead from his home terminal to an away-from-home point. He last performed service 30 hours prior to
commencing the deadhead trip. The deadhead trip consumed 5 hours and was not combined with the service trip. The service trip out of the away-from-home terminal began within 6 hours from the time the deadhead trip was completed. what payment is due?

A. 5 hours at the straight time rate.

2. What payment would have been made to the trainman in example 1 if the service trip out of the away-from-home terminal had begun 17 hours after the time the deadhead trip ended, and the held-away rule was not applicable?

A. A minimum day for the deadhead.

3. What payment would have been made to the trainman in " example 1 if the service trip out of the away-from-home terminal had begun 18 hours after the time the deadhead trip ended, and the trainman received 2 hours pay under the held-away rule?

A. 6 hours at the straight time rate.

4. A trainman is deadheaded to the home terminal after having performed service into the away-from-home terminal. The deadhead trip, which consumed 5 hours and was not combined with the

service trip, commenced 8 hours after the service trip ended. What payment is due?

A. 5 hours at the straight time rate.

5. What payment would have been made to the trainman in example 4 if the deadhead trip had begun 18 hours after the service trip ended and the held-away rule was not applicable?

A. A minimum day for the deadhead.

6. What payment would have been made to the trainman in example 4 if the deadhead trip had begun 18 hours after the time the service trip ended and the trainman received 2 hours pay under the held-away rule?

A. 6 hours at the straight time rate.

7. A trainman is deadheaded from the home terminal to an away-from-home location. Ten (10) hours after completion of the trip, he is deadheaded to the home terminal without having performed service. The deadhead trips each consumed two hours. What payment is due?

A. A minimum day for the combined deadhead trips.

* NOTE: The amount of over-miles shown in the examples are on the basis of a 100 mile day. The number of over-miles will be reduced in accordance with the application of Article IV, Section 2, of this agreement.

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ARTICLE VI (UTU) QUESTIONS & ANSWERS
Deadheading
Section 1 - Payment When Deadheading and Service Are Combined

Q-1: If an employee works from his home terminal " to the away-from-home terminal and then deadheads from the away-from-home

terminal to the home terminal, is it necessary to notify the employee to combine deadhead and service prior to going off duty on the service trip?

A-1: Yes.

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Q-2: Does the Carrier have the sole right to determine whether deadheading will be combined with service or paid for separately?

A-2: Yes.

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Q-3: How is a crew or individual to know whether or not deadheading is combined with service?

A-3: When deadheading for which called is combined with subsequent service, will be notified when called. When deadheading is to be combined with prior service, will be notified before being relieved from prior service. If not so notified, deadheading and service cannot be combined.

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Q-4: Can notification to combine deadheading and service be included in a bulletin: e.g., where a crew regularly performs deadheading that the Carrier wishes to combine with service?

A-4 Yes.

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Q-5: Where deadheading is combined with service with a mileage component, what is the rate of pay for the deadhead portion of the trip?

A-5: The rate of pay allowed for the service portion of the trip.

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Q-6: Does the new deadhead rule deal in any way with employees using their personal automobiles to deadhead?

A-6: No. Use of automobiles is not involved in this role and local agreements and understandings continue to apply.

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Q-7: Are local agreements such as "if deadheaded by highway, highway mileage applies and if deadheaded by rail, rail mileage applies" preserved by the new agreement?

A-7: Yes, in those situations where deadheading is combined with service and is paid for on a mileage basis.

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Q-8: In situations where the carrier chooses to combine deadheading with service, at what point does initial terminal delay begin?

A-8: At the point and time the crew actually reports on duty for the service trip.

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ARTICLE VI (UTU) QUESTIONS & ANSWERS
Deadheading
Section 2 - Payment For Deadheading Separate From Service

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Q-1: Can a runaround occur when a crew working into the away-from-home terminal is relieved and deadheaded home separate from service?

A-1: Local runaround rules continue to apply.

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Q-2 Are preexisting rules which provide for less than a minimum day payment when deadheaded separate and apart from service eliminated so as to now require payment of a basic day when applicable?

A-2: Yes, unless the carrier has notified the organization of their desire to retain their preexisting rule on or before November 1, 1985.

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Q-3: Section 2(a) provides that the payment to present employees for deadheading separate from service is a minimum day at the

basic rate applicable to the class of service in connection with which deadheading is performed. Does this supersede the current rule which provides that payment for deadheading on passenger trains shall be at 1/2 rate?

A-3: Yes.

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

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTIONS AT ISSUE:

ARTICLE VI - DEADHEADING:

"Does this new rule apply to deadheading in connection with:

(a) existing interdivisional runs?

(b) new interdivisional runs established under Article IX?"

FINDINGS

There is nothing contained in Article VI, Deadheadinq, of the October 31, 1985 National Mediation Agreement to suggest that such Article would not have application to either existing inter-divisional 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.

we are not persuaded, as urged by the organization, that because it was stipulated in Section 5 of Article IX of the October 31, 1985 National Mediation Agreement that interdivisional service in effect on the date of the Agreement (October 31, 1985) was not affected by Article IX, that the meaning and intent of this particular provision extends to application of Article VI.

In this latter regard, it is especially noted that the preamble to agreed-upon questions and answers describing how Article VI would be construed states that the examples illustrate application of the rule to "all employees regardless of when

their seniority date in train or engine service was established."

Further, several of the agreed-upon questions and answers would suggest that interdivisional runs were not excepted from application of Article VI by making reference to payments due a trainman who performed road service operating such distances as 170 and 275 miles from a home terminal to an away-from-home terminal and then, after taking rest, deadheading back to the home terminal.

In the circumstances, both Questions (a) and (b) must be answered in the affirmative.

AWARD:

The Question at Issue is answered in the affirmative.

Richard R. Kasher, Arbitrator   Robert E. Peterson, Arbitrator
Washington, DC March 20, 1987

ARTICLE VII - ROAD SWITCHERS, ETC.

Section 1 - Reduction in Work Week

(a) Carriers with road switcher (or similar operations), mine run or roustabout agreements in effect prior to the date of this Agreement that do not have the right to reduce six or seven-day assignments to not less than five, or to establish new assignments to work five days per week, shall have that right.

(b) The work days of five-day assignments reduced or established pursuant to Section 1(a) of this Article shall be consecutive. The five-day yard rate shall apply to new assignments established pursuant to Section 1(a) of this Article. Assignments reduced pursuant to Section 1(a) shall be compensated in accordance with the provisions of Section 1(c).

(c) If the working days of an existing assignment as described in Section 1(a) are reduced under this Article, an allowance of 48 minutes at the existing straight time rate of that assignment in addition to the rate of pay for that assignment will be provided. Such allowance will continue for a period of three years from the date such assignment was first reduced. However, such allowance will not be made to employees who establish seniority in train or engine service after the date of this agreement. Upon expiration of the three year period described above, the five day yard rate will apply to any assignment reduced to working less than six or seven days a week pursuant to this Article.

(d) The annulment or abolishment and subsequent reestablishment of and assignment to which the allowance provided for above applies shall not serve to make the allowance inapplicable to the assignment upon its restoration.

Section 2 - New Road Switcher agreements

(a) Carriers that do not have rules or agreements that allow them to establish road switcher assignments throughout their system may serve a proposal for such a rule upon the interested general chairman or chairmen. If agreement is not reached on the proposal within 20 days, the question shall be submitted to arbitration.

(b) The arbitrator shall be selected by the parties or, if they fail to agree, the National Mediation Board will be requested to name an arbitrator.

(c) The arbitrator shall render a decision within 30 days from

the date he accepts appointment. The decision shall not deal with the right of the carrier to establish road switcher assignments (such right is recognized), but shall be restricted to enumerating the terms and conditions under which such assignments shall be compensated and operated.

(d) In determining the terms and conditions under which road switcher assignments shall be compensated and operated, the arbitrator will be guided by and confined to what are the prevailing features of other road switcher agreements found on Class I railroads, except that the five day yard rate shall apply to any assignment established under this Section.

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SIDE LETTERS

October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This refers to Article VII, Road Switchers of the Agreement of this date.

In the application of Section 1(c) of the Article, it was understood that if a carrier without a pre-existing right to reduce a seven day assignment described in Section 1(a) to a lesser number of days reduces such an assignment to six days per week, the 48-minute allowance will be payable to employees on the assignment whose seniority date in train or engine service precedes the date of the Agreement. If the carrier reduces the same assignment from seven days to five, an allowance of 96 minutes would be payable.

Conversely, if the carrier had the pre-existing right to reduce a seven day assignment described in Section 1(a) to six days per week, but not to five days, and reduced the seven day assignment to six days per week, no allowance would be payable. If it reduced the assignment from seven days to five days, an allowance of 48 minutes would be payable.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours

C. I. Hopkins, Jr.

I agree:
Fred A. Hardin

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ARTICLE VII QUESTIONS AND ANSWERS

Road Switchers, Etc.

Section 1 - Reduction in Work Week
* *
Q-1: Does the three year period referred to in Section 1(c) mean the duration of the agreement?

A-1: No. The three year period commences from the date the assignment involved is reduced.

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Q-2: Is the 48 minute allowance provided for in Section 1(c) applicable on guaranteed days, holidays, or just service days?

A-2: Such allowance is applicable on the advertised or bulletined work days of a qualifying assignment, including days on which such assignment is annulled and paid a guarantee.

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Q-3 The Carrier has assignments which are advertised as "mine runs" but which are paid the same rate of pay as local freight. Do the provisions of paragraph (a) of Section 1-which refers to mine runs apply to these assignments?

A-3: Yes, the rate of pay does not change the character of the assignment.

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Q-4: Do the provisions of Article VII, Section 1, allow the Carrier to abolish six day local freight assignments and establish five day road switchers in their place?

A-4: Only if carrier had a preexisting right to abolish six-day locals and establish six-day road switchers. If carrier did not have such right, it must proceed under the provisions of Section 2.

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Q-5: If new five-day road switchers are established pursuant to Section 1, would they be paid the 48 minute allowance or the five day yard rate of pay?

A-5: The five day yard rate of pay.

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Q-6: If carrier did not have a preexisting right to reduce a six day road switcher assignment to a five day assignment and does so under Section 1, how would such an assignment be paid?

A-6: At an allowance of 48 minutes at the existing straight time rate, in addition to the rate of pay of the assignment for a three year period from the date such assignment was reduced. The 5-day yard rate of pay becomes applicable to such an assignment upon expiration of the three year period.

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Q-7: Is the 48 minute payment provided for in Section 1(c) subject to all future wage increases for the duration of applicability?

A-7 Yes, subject to the same increases as the pay of the assignment.

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Q-8: If a carrier reduces an existing road switcher assignment to 5 or 6 days, may it subsequently reestablish the assignment for 6 or 7 days?

A-8 Yes.

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Q-9: Under the above circumstances, is the 48 minute payment suspended during the period in which the assignment works 6 or 7 days?

A-9: Yes. However, it would again be payable if the assignment was sub-sequently reduced until the expiration of the 3 year period.

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ARTICLE VIII - ROAD, YARD AND INCIDENTAL WORK Section 1 - Road Crews

Road crews may perform the following work in connection with their own trains without additional compensation:

(a) Get or leave their train at any location within the initial and final terminals and handle their own switches. When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty point fixed for that assignment and such point is not within reasonable walking distance of the on and off duty point, transportation will be provided.

(b) Make up to two straight pick-ups at other location(s) in the initial terminal in addition to picking up the train and up to two straight set-outs at other location(s) in the final terminal in addition to yarding the train; and, in connection therewith, spot, pull, couple, or uncouple cars set out or picked up by them and reset any cars disturbed.

(c) In connection with straight pick-ups and/or set-outs within switching limits at intermediate points where yard crews are onduty, spot, pull, couple or uncouple cars set out or picked up by them and reset any cars disturbed in connection therewith.

(d) Perform switching within switching limits at times no yard crew is on duty. On carriers on which the provisions of Section 1 of Article V of the June 25, 1964 Agreement are applicable, time consumed as switching under this provision shall continue to be counted as switching time. Switching allowances, where applicable, under Article V, Section 7 of the June 25, 1964 Agreement or under individual railroad agreements, payable to road crews, shall continue with respect to employees whose seniority date in a craft covered by this Agreement precedes the date of this Agreement and such allowances are not subject to general or other wage increases.

(e) At locations outside of switching limits there shall be no restrictions on holding onto cars in making set-outs or pick-ups, including coupling or shoving cars disturbed in making set-outs or pick-ups.

Section 2 - Yard Crews

Yard crews may perform the following work outside of switching limits without additional compensation except as provided below:

(a) Bring in disabled train or trains whose crews have tied up under the Hours of Service Law from locations up to 25 miles outside of switching limits.

(b) Complete the work that would normally be handled by the crews of trains that have been disabled or tied up under the Hours of Service Law and are being brought into the terminal by those yard crews. This paragraph does not apply to work train or wrecking service.

Note: For performing the service provided in (a) and (b) above, yard crews shall be paid miles or hours, whichever is the greater, with a minimum of one (1) hour for the class of service performed (except where existing agreements require payment at yard rates) for all time consumed outside of switching limits. This allowance shall be in addition to the regular yard pay and without any deduction therefrom for the time consumed outside of switching limits. Such payments are limited to employees whose seniority date in a craft covered by this Agreement precedes the date of this Agreement and is not subject to general or other wage increases.

(c) Perform service to customers up to 20 miles outside switching limits provided such service does not result in the elimination of a road crew or crews in the territory. The use of a yard crew in accordance which this paragraph will not be construed as giving yard crews exclusive rights to such work. This paragraph does not contemplate the use of yard crews to perform work train or wrecking service outside switching limits.

(d) Nothing in this Article will serve to prevent or affect in any way a carrier's right to extend switching limits in accordance with applicable agreements. However, the distances prescribed in this Article shall continue to be measured from switching limits as they existed as of August 25, 1978, except by mutual agreement.

(e) Yard crews may perform hostling work without additional payment or penalty.

* ** * * *

Section 3 - Incidental Work

(a) Road and yard employees in ground service and qualified engine service employees may perform the following items of work in connection with their own assignments without additional compensation:

(1) Handle switches

(2) Move, turn and spot locomotives and cabooses

(3) Supply locomotives and cabooses except for heavy equipment and supplies generally placed on locomotives and cabooses by employees of other crafts

(4) Inspect cars

(5) Start or shutdown locomotives

(6) Bleed cars to be handled
(7) Make walking and rear-end air tests

(8) Prepare reports while under pay

(9) Use communication devices; copy and handle train orders, clearances and/or other messages.

(10) Any duties formerly performed by firemen.

(b) Road and yard employees in engine service and qualified ground service employees may perform the following items of work in connection with their own assignments without additional compensation:

(1) Handle switches

(2) Move, turn, spot and fuel locomotives

(3) Supply locomotives except for heavy equipment and supplies generally placed on locomotives by employees of other crafts

(4) Inspect locomotives

(5) Start or shutdown locomotives

(6) Make head-end air tests

(7) Prepare reports while under pay

(8) Use communication devices; copy and handle train orders, clearances and/or other messages.

(9) All duties formerly performed by firemen.

Section 4 - Construction of Article

Nothing in this Article is intended to restrict any of the existing rights of a carrier.

This Article shall become effective November 1, 1985 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before such date.

* *

SIDE LETTERS

CHARLES I. HOPKINS jr.
October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This refers to Article VIIl - Road, Yard and Incidental Work -of the Agreement of this date.

This confirms the understanding that the provisions in " Section 3 thereof, concerning incidental work, are intended to remove any existing restrictions upon the use of employees represented by the " UTU to perform the described categories of work and to remove any existing requirements that such employees, if used to perform the work, be paid an arbitrary or penalty amount over and above the normal compensation for their assignment. Such provisions are not intended to infringe on the work rights of another craft as established on any railroad.

Very truly yours

C. I. Hopkins, Jr.

I concur:

Fred A. Hardin

* *

CHARLES I. HOPKINS Jr.
October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union 14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This refers to Article VIII, Section 1(b), of the Agreement of this date which provides that only two straight pickups or setouts will be made.
This does not allow cars to be cut in behind other cars already in the tracks or cars to be picked up from behind other cars already in the tracks. It does permit the cutting of crossings,cross-walks, etc., the spotting of cars set-out, and the re-spotting of cars that may be moved off spot in the making of the two straight setouts or pickups.

Please indicate your agreement by signing in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:
Fred A. Hardin
* *

ARTICLE VII (UTU) QUESTIONS AND ANSWERS

Road, Yard and Incidental Work
Section 1 - Road Crews

Q-1: In application of the provisions of Section 1(b), of Article VIII, is there any limit to the couplings that road crews can be required to make when picking up cars?

A-1 The language "spot, pull, couple or uncouple cars set out or picked up by them and reset any cars disturbed' in Sections 1(b) and (c) of Article VIII was intended to apply to setting out and picking up cars and no limit is imposed on the number of

couplings a crew may make when performing such work.

* * * * * * * * * *

Q-2: Under the provisions of Section 1(a) a crew is relieved from duty at a point short of the off-duty point of the assignment, and is provided transportation to the off-duty point. How are the time and miles involved for such a trip computed?

A-2: The time would be continuous until reaching the off-duty point. Computation of the miles depends on local rules and practices.

* * * * * * * * * *

Q-3: Train to be yarded in Track B of bowl yard makes a set-out at east yard, a set-out in Track A of the bowl yard, yards the balance of train in Track B, and then places caboose on the caboose track. Track B of the bowl yard would have held the balance of the train after the set-out at east yard. It is our understanding that the set-out in Track A of the bowl yard is a second set-out in the final terminal. Is this the correct interpretation of the rule?

A-3 No.

* * * * * * * * * *

Q-4: Can we require an inbound crew to shove their setouts to a particular spot on the yard track, i.e., to air hose or the bottom of the track?

A-4: Yes.

* * * * * * * * * *

Q-5: An outbound crew picks up cars from the A Yard, from the B Yard and couples to the caboose in the C Yard. When would initial terminal delay cease, upon departure from the A Yard or when the train is assembled with the caboose in the C Yard?

A-5: There has been no change in the application of ITD Rules.

* * * * * * * * * *

Q-6 May road crews now be required to pick up or set out cars in a foreign carriers yard or in their own yard in connection with solid over-the-road train movements under Article VII of the

1972 Agreement?

A-6 Article VIII did not change the existing interpretations regarding solid over-the-road train operations.

* * * * * * * * * *

"(e) Yard crews may perform hostling work without additional payment or penalty.'

Q-1: Is it correct to assume that under Section 2(c) of Article VIII no additional payment would be required for a yard crew serving customers up to 20 miles outside switching limits?

A-1: Yes.

* * * * * * * * * *

Q-2: Under Section 2 - Yard Crews - Can we now have a reduced yard crew go the 25 mile limit and perform local work inbound with the train relieved due to the hours of service law?

A-2: The yard crew may be required to perform the local work inbound with the train relieved; however, that portion of the question relating to a "reduced" yard crew may depend on local crew consist agreement.

* * * * * * * * * *

Q-3: Does the term "hostling work" in Section 2(e) include hostling work inside switching limits?

A-3: Yes.

* * * * * * * * * *

Q-4: Does service pursuant to Section 2(c) of Article VIII require compilation of equity reports?

A-4: No.

* * * * * * * * * *

Q-1: A carrier currently is required to pay an allowance of 15 minutes to a brakeman for supplying his caboose at an outlying point. Is this type of an arbitrary eliminated by the provisions of Section 3 of Article VIII?

A-1:. Yes.

* * * * * * * * * *

Q-2: An existing rule provides for a preparatory time arbitrary payment to engineers and firemen for each tour of duty worked "for all services in care, preparation and inspection of locomotives, including the making out of necessary reports required by law and the company and being on their locomotive at the starting time of their assignments." Does Section 3 of Article VIII contemplate the elimination of such an arbitrary?

A-2: No, if the engine service employees are required to report for duty in advance of the starting time of the assignment.

* * * * * * * * * *

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

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE VIII - ROAD, YARD AND INCIDENTAL WORK (Section 1 - Road Crews) :

"1. A carrier had separate yards located within the same switching limit for yard crews employed there. The Agreement in effect prior to October 31, 1985 prohibited road crews from handling trains out of certain of the separate yards. As a result, yard transfers were used to handle trains between certain yards and the yard from which road crews departed or arrived. Are the preexisting restrictions set aside by Section 1(a) so that the road crews may handle their trains to or from any of the yards in the same switching limits?"

FINDINGS

Section 1(a) of Article VIII of the October 31, 1985 National Mediation Agreement provides as follows:

"Road crews may perform the following work in connection with their own trains without additional compensation:

(a) Get or leave their train at any location within the initial

and final terminals and handle their own switches. When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty point fixed for that assignment and such point is not within reasonable walking distance of the on and off duty point, transportation will be provided. "

It is clearly evident by the language incorporated into Section 1(a), supra, that carriers have been relieved of any preexisting contractual restrictions which prohibited road crews from reporting for duty or being relieved from duty at a point other than the on and off duty point fixed for their assignment, and that a road crew may get or leave their train at any location within a terminal and handle their own switches.

The above determination notwithstanding, Section 1(a) did not, as urged by the Carriers, extend to road crews the right to perform yard service where such work is otherwise restricted by preexisting agreements, and which agreements remained unchanged by adoption of Section 1(a). The extent of relief is limited to that specifically contained in Section 1(a) and other provisions of the October 31 1985 National Mediation Agreement, and not to the full extent of relief which the Carriers' sought before the Study Commission.

AWARD:

The Question at Issue is answered as set forth in the above Findings.

RICHARD R. KASHER, ARBITRATOR ROBERT E. PETERSON, ARBITRATOR
Washington DC March 20, 1987

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

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE VIII - ROAD, YARD AND INCIDENTAL WORK (Section 1 - Road Crews) :

"2. As a result of a coordination of facilities through merger of two railroads, yard crews were not deprived of the work of transferring cars to the various yards within the consolidated terminal. Do the provisions of Article VIII now supersede the coordination agreement so as to allow road crews to accomplish the work formerly performed by yard crews?"

FINDINGS

In terms of a coordination of facilities through merger of two railroads, it must be held that the October 31, 1985 National Mediation Agreement was negotiated within the context of present day conditions. Therefore, where existing coordination agreements establish specific work jurisdictions, and where those consolidation agreements have not been specifically superseded by Article VIII of this October 31, 1985 National Mediation Agreement, it must be concluded that provisions of the coordination agreement continue in full force and effect.

For example, Section 1 does not grant a carrier the right to use a road crew to transfer cars from one yard to another yard within a terminal. However, Section 1 does permit a carrier to have road crews perform certain specified work in connection with their own trains; i.e. , a road crew may make up to two straight pick-ups at other location(s) in the initial terminal in addition to picking up the train. Therefore, in cases where a carrier is exercising a right granted under Section 1, pre-existing limitation are superseded.

AWARD:

The Question at Issue is answered as set forth in the above Findings.

Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator
Washington, DC March 20, 1987
* *

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

UNITED TRANSPORTATION UNION
AND
NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE VIII - ROAD, YARD AND INCIDENTAL WORK (Section 1 - Road Crews) :

"3. What geographic locations in the initial, or final terminal are included in the reference in Article VIII, Section 1(a), to 'any location within the initial and final terminal?"

FINDINGS

Section 1(a) of Article VIII of the October 31, 1985 National Mediation Agreement reads:

"Road crews may perform the following work in connection with their own trains without additional compensation:

(a) Get or leave their train at any location within the initial and final terminals and handle their own switches. When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty point fixed for that assignment and such point is not within reasonable walking distance of the on and off duty point, transportation will be provided."

The above language can only be interpreted as having included the geographic confines of the initial or final terminals, and that where a crew is required to report for duty or is relieved at a point within such terminal which is other than an on and off duty point that is not within reasonable walking distance, transportation will be provided.

AWARD:

The Question at Issue is answered as set forth in the above Findings.

Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator
Washington, DC March 20, 1987

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

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION. AT ISSUE:

ARTICLE VIII - ROAD, YARD AND INCIDENTAL WORK (Section 1 - Road Crews) :

"4. Did Section 1(b) of Article VIII change the agreed upon interpretation under Article X of the August 25, 1978 National Agreement?"

FINDINGS

Section 1(b) of Article VIII of the October 31, 1985 National Mediation Agreement reads:

"Road crews may perform the following work in connection with their own trains without additional compensation:

***

(b) Make up to two straight pick-ups at other location(s) in the initial terminal in addition to picking up the train and up to two straight set-outs at other location(s) in the final terminal in addition to yarding the train; and, in connection therewith, spot, pull, couple, or uncouple cars set out or picked up by them and reset any cars disturbed."

Except that two instead of one straight pick-up may be made in the initial terminal and two instead of one straight set-out may be made in the final terminal, the record fails to show that the above provisions of Article VIII have otherwise changed agreed upon interpretations of the August 25, 1978 National Agreement.

AWARD:

The Question at Issue is answered as set forth in the above Findings.

Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator
Washington, DC March 20, 1987

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

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE VIII - ROAD, YARD AND INCIDENTAL WORK (Section 1 - Road Crews) :

"5. Are existing local agreements prohibiting road crews from holding onto cars while making set-outs and pick- ups within switching limits superseded by Section 1(e)?"

FINDINGS

Section 1(e) of Article VIII of the October 31, 1985 National Mediation Agreement reads:

"Road crews may perform the following work in connection with their own trains without additional compensation:

* * *

(e) At locations outside of switching limits there shall be no restrictions on holding onto cars in making set-outs or pick-ups, including coupling or shoving cars disturbed in making set-outs or pick-ups."

The above language, which removes restrictions at locations outside of switching limits, establishes by contract law principles that existing restrictions within switching limits were not changed by the October 31, 1985 National Mediation Agreement.

AWARD

The Question at Issue is answered in the negative.

Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator
Washington, DC March 20, 1987

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

UNITED TRANSPORTATION UNION
AND
NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE VIII - ROAD, YARD AND INCIDENTAL WORK Section 2 - Yard

Crews) :

"6. Where the pre-existing local agreement required extra road crews to be called to protect service at industries located up to 20 miles outside of switching limits, may the Carrier now use yard crews to perform this work?"

FINDINGS

Section 2 (c) of Article VIII of the October 31, 1985 National Mediation Agreement provides as follows:

"Yard crews may perform the following work outside of switching limits without additional compensation except as provided below:

* * * * * * *

(c) Perform service to customers up to 20 miles outside switching limits provided such service does not result in the elimination of a road crew or crews in the territory. The use of a yard crew in accordance with this paragraph will not be construed as giving yard crews exclusive rights to such work. This paragraph does not contemplate the use of yard crews to perform work train or wrecking service outside switching limits."

The above language must be read as permitting the servicing of customers by yard crews on but a limited or incidental basis. Certainly, if the amount of work in servicing customers was to constitute the preponderant duties of a yard crew or crews, then it would be violative of Section 2(c), subra, since it would be tantamount to the elimination of a regular, pool, or extra road crew or crews in the territory.

AWARD:

The Question at Issue is answered in the affirmative, subject to the conditions as set forth in the above Findings.

Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator
Washington, DC March 20, 1987

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JOINT INTERPRETATION COMMITTEE
ARTICLE XVI

NATIONAL MEDIATION AGREEMENT OF OCTOBER 31, 1985

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE VIII - ROAD, YARD AND INCIDENTAL WORK (Section 3 - Incidental Work)

"7. Do paragraphs (a) (3) and (b) (3) require employees covered thereby to supply locomotives and cabooses, except for heavy equipment and supplies, without additional compensation?"

FINDINGS -

There is no question that Sections 3 (a) (3) and 3(b) (3) of Article VIII and Side Letter No. 9 permit the Carriers to have employees represented by the Organization place supplies on locomotives and cabooses without additional compensation. However, as also set forth in such contractual provisions, such work may not infringe on work rights of another craft as established on any railroad.

Unfortunately, neither the Agreement nor the Side Letter describe what incidental work was to be performed by employees represented by the Organization in supplying engines or cabooses, and, more especially, what work was excepted by reference to "heavy equipment and supplies generally placed on locomotives and cabooses by employees of other crafts."

The Carriers contend that the exception is singular but two conditions must be met, i.e. , either the equipment or supplies are heavy and such equipment or supplies have generally been placed on locomotives or cabooses by employees of other crafts. It says that if all supplies generally placed on locomotives and cabooses by employees of other crafts is considered an independent exception, it is then difficult to see what the Carriers gained from these provisions.

The Organization maintains that the exception is, in effect, two separate exceptions. It says one exception relates to heavy equipment; the second to all supplies generally placed on locomotives and cabooses by employees of other crafts. It asserts there was no intention of having operating employees assume or infringe on the work of nonoperating employee crafts in supplying cabooses or locomotives and that operating

employees would be used only when necessary to avoid delay, and that the supplies were relegated to such items as "report forms, flagging equipment and items of this nature."

A review of discussion outlines which had preceded adoption of the October 31, 1985 National Mediation Agreement reveals that the earliest drafts had referenced the work here at issue in the following manner: "Move, turn, spot and supply locomotives and cabooses." Subsequently, the following language was also included in a discussion outline:

"(c) In supplying locomotives and cabooses of their assignment in accordance with the provisions of (a) (2) and (b) (2) above, employees will not be required, except in emergency, to place on board heavy equipment such as tow chains or rerailers where such equipment is part of the normal complement of tools permanently assigned to the locomotive or caboose." (June 18, 1985 Discussion Outline)

Thereafter, the discussion drafts came to read not unlike the manner finally incorporated into the October 31, 1985 National Mediation Agreement, principally:

"Supply locomotives and cabooses except for heavy equipment and supplies generally placed on locomotives and cabooses by employees of other crafts. "

It would seem from this review of discussion drafts that the Organization is essentially correct in urging the intent of the Agreement was that there be two exceptions rather than the singular exception as argued by the Carriers.

In the circumstances, it would appear proper to conclude that heavy be defined to include, as stated in one discussion draft, tow chains or rerailers and such equipment which is part of the normal complement of tools permanently assigned to the locomotive or caboose as well as the commonly accepted dictionary definition of the word, i. e. , items not easy to lift or carry; burdensome; of great weight; or having much weight for its size or kind.

As concerns the type of supply work that may be required of employees represented by the Organization, we are not persuaded that it was intended to be relegated only to such items, as the Organization urges, i.e. , "report forms, flagging equipment and items of this nature." Rather, it would seem to have been the meaning and intent of the Agreement to include that type of work which was described by the Carriers in its presentation, namely:

"The type of work involved is that which can easily be performed by crew members as part of their normal assignments. "

Accordingly, absent definitive guidelines or specific facts of record as to what might pertain with respect to individual circumstances, we think a prudent rule of reason should prevail as to what work may be required of employees represented by the Organization without doing violence to the work rights of another craft as established on any railroad. In this same regard, we would anticipate that if both the Carriers and the Organization monitor application of this holding that they should be able to establish meaningful guidelines so as to eliminate the necessity for future grievances. "

AWARD

The Question at Issue is answered in the affirmative, subject to considerations and definitions set forth in the above Findings.

Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator
Washington, DC March 20, 1987

* *

ARTICLE IX - INTERDIVISIONAL SERVICE

NOTE: As used in this Agreement, the term interdivisional service includes interdivisional, interseniority district, intradivisional and/or intraseniority district service.

An individual carrier may establish interdivisional service, in freight or passenger service, subject to the following procedure.

Section 1 - Notice

An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.

Section 2 - Conditions

Reasonable and practical conditions shall govern the establishment of the runs described, including but not limited to the following:

(a) Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.

(b) All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on October 31, 1985 by the number of miles encompassed in the basic day as of that date. Car scale and weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

(c) when a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the carrier shall authorize and provide suitable transportation for the crew.

Note: Suitable transportation includes carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

(d) On runs established hereunder crews will be allowed a $4.15 meal allowance after 4 hours at the away-from-home terminal and another $4.15 allowance after being held an additional 8 hours.

(e) In order to expedite the movement of interdivisional runs, crews on runs of miles equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For crews on longer runs, the carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crew members shall be paid an allowance of $1.50 for the trip.

(f) The foregoing provisions (a) through (e) do not preclude the parties from negotiating on other terms and conditions of work.

Section 3 - Procedure

Upon the serving of a notice under Section 1, the parties will discuss the details of operation and working conditions of the proposed runs during a period of 20 days following the date of the notice. If they are unable to agree, at the end of the 20-day period, with respect to runs which do not operate through a home terminal or home terminals of previously existing runs which are to be extended, such run or runs will be operated on a trial basis until completion of the procedures referred to in Section 4. This trial basis operation will not be applicable to runs which operate through home terminals.

Section 4 - Arbitration

(a) In the event the carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 30 days after arbitration is requested by the carrier. The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above.

(b) The decision of the arbitration board shall be final and binding upon both parties, except that the award shall not require the carrier to establish interdivisional service in the particular territory involved in each such dispute but shall be accepted by the parties as the conditions which shall be met by the carrier if and when such interdivisional service is established in that territory. Provided further, however, if carrier elects not to put the award into effect, carrier shall be deemed to have waived any right to renew the same request for a period of one year following the date of said award, except by consent of the organization party to said arbitration.

Section 5 - Existing Interdivisional Service

Interdivisional service in effect on the date of this Agreement is not affected by this Article.

Section 6 - Construction of Article

The foregoing provisions are not intended to impose restrictions with respect to establishing interdivisional service where restrictions did not exist prior to the date of this Agreement.

Section 7 - Protection

The provisions of Article XIII of the January 27, 1972 Agreement shall apply to employees adversely affected by the application of this Article.

* * * * * *

This Article Shall become effective November 1, 1985 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before such date. Article XII of the January 27, 1972 Agreement shall not apply on any carrier on which this Article becomes effective.

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* * * ** * * * * * ** * * * * SIDE LETTER* * * * * * * * * * * * * *

October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This confirms our understanding with respect to Article IX, Interdivisional Service of the Agreement of this date.

On railroads that elect to preserve existing rules or practices with respect to interdivisional runs, the rates paid for miles in excess of the number encompassed in a basic day will not exceed those paid for under Article IX, Section 2(b) of the agreement of this date.

Please indicate your agreement by signing in the space provided below.

Very truly yours,
C. I. Hopkins, Jr.

I agree:
Fred A. Hardin

* *

ARTICLE IX (UTU) QUESTION & ANSWERS

Interdivisional Service

Q-1: A new interdivisional run is established on December 1, 1935 consisting of 200 miles. It is our understanding that overmiles on this assignment will be those miles in excess of 102 miles (the new basic day miles, effective November 1, 1985, pursuant to Section 2(a) of Article IV), and that the 98 overmiles will be paid at the first 100 mile rate (car scale and weight-on-drivers additives applied) in effect on October 31, 1985. Is this understanding correct?

A-1 Yes.

* * * * * * * * * *

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

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE IX - INTERDIVISIONAL SERVICE:

"1. Does Article IX of the UTU National Agreement of October 31, 1985 apply on all carriers listed in Exhibit 'A' attached thereto, including carriers not a party to the UTU National Agreement of January 27, 1972?"

FINDINGS

This particular issue was the subject of a dispute before Public Law Board No. 4099. The Chicago and North Western Transportation Company, a carrier party to the October 31, 1985 National Mediation Agreement, but not party to the January 27, 1972 National Agreement, placed the following question at issue before PLB No. 4099:

"May the Carrier progress its November 1985 Notices pertaining to the establishment of Interdivisional Service in accordance with Article IX of the October 1985 UTU National Agreement, or is [it] precluded from so proceeding in light of the July 22, 1971 System Agreement as it pertains to Interdivisional Service on this property?"

PLB No. 4099, with Dr. Jacob Seidenberg serving as chairman and neutral member, held in part here pertinent:

"In summary, the Board finds the 1971 System Agreement is a viable and legally sufficient instrument, and that until it is legally changed, it is improper for the Carrier to seek to progress notices for the establishment of interdivisional service under the terms and conditions of Article IX of the October 31, 1985 National Agreement."

In setting forth the rationale for its decision, PLB No. 4099, among other things, stated:

"The Board finds that, on this property, the establishment of interdivisional service is an issue of long standing, and an issue on which the parties have entrenched positions. It is also clear that, at least up to 1985, this Carrier has eschewed the national handling of interdivisional service. ... [The] Carrier initially was firmly opposed to have interdivisional service controlled or governed by national agreements. . [The] parties chose to have the July 1971 System Agreement be the instrumentality by which interdivisional service was to be operated on this property. The Organization testified that the Carrier was so insistent that interdivisional service be handled locally rather than nationally, that during the 1970's it sought and obtained a court judgment, mandating that the Organization negotiate this issue on a system-wide rather than a national basis.

"The Board finds no language in the 1985 National Agreement that vitiates the viability of the 1971 System Agreement pertaining to interdivisional service. It finds the general language of

the 1985 Agreement does not constitute a pro tanto revocation of the specific language of the 1971 covenant. The Board finds the specific language of Article IX only refers to Article XII of the 1972 National Agreement but that language would have no applicability to an entity such as the Carrier, who was not party to the 1972 National Agreement.

* * * * * * *

The Board finds in short, that neither by express provision or by implication, the adoption of the 1985 National Agreement by the parties had the effect of revoking or amending the 1971 System Agreement by operation of law.

The Board finds that the parties negotiated its 1971 System Agreement as being responsive to its particular needs. If one or both of these parties now find that the 1971 Agreement is no longer adapted to its present operating needs, it must seek to effect the needed changes by direct negotiations rather than seeking to reach such an objective by arbitral construction of a discrete contractual instrument as the 1985 National Agreement, which is not causually related, by reference or otherwise, to the 1971 System Agreement.

The Board finds no evidence to show the Carrier, during the protracted negotiations which culminated in the October 1985 National Agreement intended to have the 1985 Agreement abrogate the 1971 System Agreement [in effect on the C&NW RR].... "

Since PLB 4099 thoroughly considered the issue, and the Board's award draws its essence from the collective bargaining agreements which were under consideration, we have no reason to disagree with the findings of that board.

AWARD

The Question at Issue is answered in the negative.

Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator Washington, DC March 20, 1987

* *

JOINT INTERPRETATION COMMITTEE

ARTICLE XVI
NATIONAL MEDIATION AGREEMENT OF OCTOBER 31, 1985

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE IX - INTERDIVISIONAL SERVICE:

"2. Does Article IX apply in cases where carriers seek to establish interdivisional service to operate through an existing home terminal?"

FINDINGS:

Article IX, Interdivisional Service, of the October 31, 1985 National Mediation Agreement, permits a carrier to establish interdivisional service through an existing home terminal subject, of course, to procedural conditions as prescribed and the proscription of Section 5 of such Article, i.e.: "Interdivisional service in effect on the date of this Agreement [October 31, 1985] is not affected by this Article [IX]."

In making this determination we think it especially significant that Section 3, Procedure, of Article IX of the October 31, 1985 National Mediation Agreement includes references to operation of interdivisional service through home terminals. Section 3 reads in its entirety as follows:

"Upon the serving of a notice under Section 1, the parties will discuss the details of operation and working conditions of the proposed runs during a period of 20 days following the date of the notice. If they are unable to agree, at the end of the 20-day period, with respect to runs which do not operate through a home terminal or home terminals of previously existing runs which are to be extended, such run or runs will be operated on a trial basis until completion of the procedures referred to in Section 4. This trial basis will not be applicable to runs which operate through home terminals." (Underscoring Added)

The conditions which prevail relative to establishment of interdivisional service through an existing home terminal, in addition to those prescribed in Article IX of the October 31, 1985 National Mediation Agreement, include application of the meaning and intent of paragraph three of Section 2(a) of Article

XII, Interdivisional Service, of the National Agreement of January 27, 1972 with respect to whether or not a rule under which such runs are established should contain a provision that special allowances to home owners should be included because of moving to comparable housing in a higher cost real estate area.

In this latter regard, it is recognized that Section 7, Protection, of the October 31, 1985 National Mediation Agreement reads:

"The provisions of Article XIII of the January 27, 1972 Agreement shall apply to employees adversely affected by the application of this Article [IX]."

At the same time, it is significant that the third paragraph of Section 2(a) of Article XII of the January 27, 1972 National Agreement states as follows:

"In its decision the Task Force shall include among other matters decided the provisions set forth in Article XIII of this [January 27, 1972] Agreement for protection of employees adversely affected as a result of the discontinuance of any existing runs or the establishment of new runs resulting from application of this rule, and in addition may give consideration to whether or not such rule should contain a provision that special allowances to home owners should be included because of moving to comparable housing in a higher cost real estate area."

AWARD

The Question at Issue is answered in the affirmative, subject to applicable conditions as set forth in the above Findings.

Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator Washington, DC March 20, 1987

* * * * * * * * * * * * * * * * * *

ARTICLE X - CABOOSES

Section 1 - Unit And Intermodal Trains

(a) Article X, Section 4, of the October 15, 1982 National Agreement provides for the elimination of cabooses in through freight (including converted through freight) service up to 25% of the base established thereby. The parties agree that in addition to a carrier's rights under such provision and other provisions of said Article X, cabooses may be discontinued on unit-type trains (e.g., coal, grain, phosphate) and intermodal-type trains (e.g., piggyback, auto rack, double stack) operated in through freight (including converted through freight) service based on Guidelines and Conditions (Sections 2 and 3 of Article X of the October 15, 1982 National Agreement).

(b) Except as provided in paragraph (a) above, Article X of the October 15, 1982 Agreement remains in effect.

Section 2 - Run-Through Service

In run-through service, a caboose which meets the basic minimum standards of the railroad on which it originated will be considered as meeting the basic minimum standards of the other railroad or railroads on which it is operated.

* *

SIDE LETTERS

* * * * * * * *

October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This refers to Article X, Cabooses of the Agreement of this date.

This confirms our understanding that cabooses may be removed from unit and intermodal trains without further negotiations or arbitration, provided the guidelines and conditions set forth in

Sections 2 and 3 of Article X of the October 15, 1982 Agreement, as amended, are complied with.

In application of the 50% limitation in Article X, Section 4, of the October 15, 1962 Agreement, with regard to the number of trains which can be submitted to arbitration, in view of the amendments to Such Article made in the Agreement of this date, any unit and intermodal train already submitted to arbitration shall be excluded from such 50%.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,
C. I. Hopkins, Jr.

I agree:
Fred A. Hardin

* *

12

October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This confirms oral advice during our discussions with respect to the carriers' future plans for discontinuance of cabooses under Article X of the Agreement of this date.

The carriers signatory to this Agreement have no plans to, and hereafter will not, cover windows or permanently close doors of cabooses utilized by train service employees, unless otherwise agreed.

The carriers intend to and will comply with the implementation and other provisions of the caboose agreement.

Very truly yours,
C. I. Hopkins, Jr.

* *

13

October 31, 1985

JOINT STATEMENT COVERING ARTICLE X OF
THE AGREEMENT OF THIS DATE

This refers to that part of our agreement of this date dealing with cabooses and the lengthy discussions that addressed our mutual concerns with respect to operations without cabooses.

Our respective concerns have been throughly discussed and understood and, therefore, we are mutually committed to the terms and intent of our Agreement.

We also recognize that should a question arise with respect to safety of operations, the Federal Railroad Administration is available to either or both parties for consideration of any such matter.

F. A. Hardin,
President
United Transportation Union

C. I. Hopkins, Jr,
Chairman
National Carriers' Conference Committee

* *

October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This refers to Articles X and XI of the National Agreement of this date permitting certain cabooses and locomotives which meet the basic minimum standards of the home railroad or section of the home railroad to operate on other railroads or sections of the home railroad.

On reviewing the current standards that exist on the major railroads with respect to such cabooses and locomotives, we recognized that while the standards varied from one property to another with respect to various details, the standards of all such railroads complied with the minimum essential requirements necessary to permit their use in the manner provided in Articles X and XI. For example, such minimum standards for locomotives would include a requirement that there are a sufficient number of seats for all crew members riding in the locomotive consist.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,
C. I. Hopkins, Jr.

I agree:
Fred A. Hardin

* *

ARTICLE XI - LOCOMOTIVE STANDARDS

In run-through service, a loco@otive which meets the basic minimum standards of the home railroad or section of the home railroad may be operated on any part of the home railroad or any other railroad.

* * * * * * * * * * *SIDE LETTER* * * * * * * * * * * * * * * *
*
14

October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This refers to Articles X and XI of the National Agreement of this date permitting certain cabooses and locomotives which meet the basic minimum standards of the home railroad or section of the home railroad to operate on other railroads or sections of the home railroad.

In reviewing the current standards that exist on the major railroads with respect to such cabooses and locomotives, we recognized that while the standards varied from one property to another with respect to various details, the standards on all such railroads complied with the minimum essential requirements necessary to permit their use in the manner provided in Articles X and XI. For example, such minimum standards for locomotives would include a requirement that there are a sufficient number of seats for all crew members riding in the locomotive consist.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,
C. I. Hopkins, Jr.

I agree:
Fred A. Hardin

* *

ARTICLE XI (UTU) QUESTIONS & ANSWERS

Q-1: Does Article XI apply only to solid trains as defined in Article VII of the January 27, 1972 Agreement in "run-through" service?

A-1: Application is not limited to inter-railroad "solid train" operations but it also applies to intra-railroad "run through"service.

* * * * * * * * * *

ARTICLE XII - TERMINATION OF SENIORITY

The seniority of any employee whose seniority in train or engine service is established after the date of this Agreement and who is furloughed for 365 consecutive days will be terminated if such employee has less than three (3) years of seniority.

ARTICLE XIII - FIREMEN

The craft or class of firemen (helpers) shall be eliminated through attrition except to the extent necessary to provide the source of supply for engineers and for designated passenger firemen, hostler and hostler helper positions. Trainmen shall become the source of supply for these positions as hereinafter provided.

Section 1 - Amendments to Fireman Manning Agreement of July 19, 1972

(1) Change Article I, Section 1(a) to read as follows:

(a) For fulfilling needs arising as the result of assignments and vacancies, temporary or otherwise, in designated passenger service and in hostler, hostler-helper service, pursuant to mileage or other regulating factors on individual carriers and in accordance with Article IV of this Agreement."

(2) Change Article I, Section 3(a) to read as follows:

"(a) Determinations of the number of employees required on each seniority district will be based on the maximum applicable regulating factor for each class of service contained in the rules on each carrier relating to increasing or decreasing the force of locomotive engineers.

(3) Change Article I, Section 3(e) to read as follows:

"(e) The number of employees required as of each 1 determination period will be based on engineer service during the twelve months' period as follows:

Passenger service

Total hours paid for multiplied by the number of miles encompassed in a minimum day divided by the number of hours encompassed in a minimum day.

Freight service

Total hours paid for plus one-half overtime hours, multiplied by the number of miles encompassed in a minimum day divided by the number of hours encompassed in a minimum day.

Yard service

Total hours paid for plus one-half overtime hours, divided by 8.

The results thus obtained shall be divided by the maximum applicable regulating factor as provided in paragraph (a) of this Section 3. The sum of employees thus determined will be increased by 10% to cover vacations and layoffs.

NOTE: As used in this paragraph, the term 'total hours paid for' includes all straight time hours paid for including hours paid for while working during scheduled vacations periods and the basic day's pay for holidays as such, all overtime hours paid for including overtime paid for working on holidays, and the hourly equivalent of arbitraries and special allowances provided for in the schedule agreements. The term does not include the hourly equivalent of vacation allowances or allowances in lieu of vacations, or payments arising out of violations of the schedule agreement."

(4) Change Article I, Section 3(f) by inserting and on furlough" in the first and second sentences after 'the number of firemen in active service" and by eliminating (1) to the NOTE and renumbering the remaining three enumerated items.

(5) Eliminate Section 3(h) of Article I and reletter the subsequent subsection.

(6) Change Article III, Section 1 to read as follows:

Section 1 - Firemen (helpers) whose seniority as such was established prior to November 1, 1985 shall have the right to exercise their seniority on assignments on which, under the National Diesel Agreement of 1950 (as in effect on January 24, 1964), the use of firemen (helpers) would have been required, and on available hostler and hostler helper assignments subject to the following exceptions:

(a) When required to fulfill experience requirements for promotion, or engaged in a scheduled training program.

(b) When their services are required to qualify for or fill passenger or hostler or hostler helper vacancies in accordance with Article IV of this Agreement.

(c) When restricted to specific assignments as referred to in Article VI of this Agreement.

(d) When required to fill engineer vacancies or assignments.

The exercise of seniority under this Article will be subject to the advertisement, bidding, assignment, displacement and mileage rules on the individual Carriers.

NOTE: As to any carrier not subject to the National Diesel Agreement of 1950 on January 24, 1964, the term 'the rules in effect on January 24, 1964 respecting assignments (other than hostling assignments) to be manned by firemen (helpers)' shall be substituted in this Article for the term 'the National Diesel Agreement of 1950."

Section 1.5 - Firemen (helpers) whose seniority as such is established on or after November 1, 1985 will have the right to exercise seniority limited to designated positions of passenger fireman, hostler or hostler helper. The seniority rights of such firemen are subject to the following exceptions:

(a) When required to fulfill experience requirements for promotion, or engaged in a scheduled training program.

(b) when required to fill engineer vacancies or assignments.

This will not preclude the carrier from requiring firemen to maintain proficiency as engineer and familarity with operations and territories by working specified assignments.

(7) Change Article III, Section 4 to read as follows:

Section 4(a) - All firemen (helpers) whose seniority as such was established prior to November 1, 1985 will be provided employment in accordance with the provisions of this Article until they retire, resign, are discharged for cause, or are otherwise severed by natural attrition; provided, however, that such firemen (helpers) may be furloughed if no assignment working without a fireman (helper) exists on their seniority district which would have been available to firemen (helpers) under the National Diesel Agreement of 1950 (as in effect on January 24, 1964), and if no position on an extra list as required in Section 3 above exists on their seniority district, subject to Section 5 of this Article.

"Section 4(b) - Firemen whose seniority as such is established on or after November 1, 1985 may be furloughed when not utilized pursuant to Section 1.5 of this Article.

(8) Change Article III, Section 5(a) to read as follows:

"Section 5(a) - With respect to firemen (helpers) employed after

July 19, 1972 and prior to November 1, 1985, the provisions of Section 4(a) above will be temporarily suspended on any seniority district to the extent provided in this Section 5 if there is a decline in business within the meaning of this Section.

(9) Change Article IV, Section 1 to read as follows:

"Section 1 - Firemen (helpers) who established a seniority date as fireman prior to November 1, 1985 shall be used on assignments in passenger service on which under agreements in effect immediately prior to August 1, 1972, the use of firemen (helpers) would have been required. The use in passenger service of firemen (helpers) who establish seniority as firemen on or after November 1, 1985 will be confined to assignments designated by the carrier.

(10) Change Article IV, Section 2 to read as follows:

(a) Except as modified hereinafter, assignments in hostling service will continue to be filled when required by agreements in effect on individual carriers.

(b) The carriers may discontinue using employees represented by the United Transportation Union as hostlers or hostler helpers provided that it does not result in furlough of a fireman who established seniority prior to November 1, 1985 nor the establishment of a hostler position represented by another organization, and provided, further, that this provision will not act to displace any employee who established seniority prior to November 1, 1985 and who has no rights to service except as hostler or hostler helper.

(c) Employees in engine service who established seniority prior to November 1, 1985 will continue to fill hostler and hostler helper positions and vacancies thereon in accordance with agreements in effect as of that date. If such position cannot be filled by such employees, and it is not discontinued pursuant to Paragraph (b) above, qualified train service employees will be used. In that event, bulletined vacancies will be advertised to train service employees, and if no bids are received the junior qualified train service employee at the location will be assigned; temporary vacancies will be filled from the yard or combined road/yard extra board.

(d) Yard crews may perform hostling work without additional payment or penalty to the carrier.

(11) Change Article VIII to read as follows:

ARTICLE VIII - RESERVE FIREMEN

The carrier shall have the right to offer 'Reserve Fireman' status to any number of active firemen, working as such, with seniority as firemen prior to November 1, 1985 (who are subject to work as locomotive engineers). Where applied, Reserve Fireman status shall be granted in seniority order on a seniority district or home zone basis under the terms listed below:

(1) An employee who chooses Reserve Fireman status must remain i that status until he either (i) is recalled and returns to hostler or engine service pursuant to Paragraph (2), (ii) is discharged from employment by the carrier pursuant to Paragraph (2) or for other good cause, (iii) resigns from employment by the carrier, (iv) retires on an annuity (including a disability annuity) under the Railroad Retirement Act, or (v) otherwise would not be entitled to free exercise of seniority under this Fireman Manning Agreement; whichever occurs first. If not sooner terminated, Reserve Fireman status and all other employment rights of a Reserve Fireman shall terminate when he attains age 70.

(2) Reserve Firemen must maintain their engine service and hostler proficiencies while in such status, including successfully completing any retraining or refresher programs that the carrier may require and passing any tests or examinations (including physical examinations) administered for purposes of determining whether such proficienties and abilities have been maintained. Reserve Firemen also must hold themselves available for return to hostler and engine service upon seven days' notice, and must return to hostler or engine service in compliance with such notice. Reserve Firemen shall be recalled in reverse seniority order unless recalled for service as engineer. Failure to comply with any of these requirements will result in forfeiture of all seniority rights.

(3) Reserve Firemen shall be paid at 70% of the basic yard fireman's rate for five days per week. No other payments shall be made to or on behalf of a Reserve Fireman except (i) payment of premiums under applicable health and welfare plans and, (ii) as may otherwise be provided for in this Article.
No deductions from pay shall be made on behalf of a Reserve Fireman except (i) deductions of income, employment or payroll taxes (including railroad retirement taxes) pursuant to federal, state or local law; (ii) deductions of dues pursuant to an applicable union shop agreement and any other deductions authorized by agreement, (iii) as may otherwise be authorized by

this Article and (iv) any other legally required deduction.

(4) Reserve Firemen shall be considered in active service for the purpose of this Fireman Manning Agreement, including application of the decline in business formula.

(5) Other non-railroad employment while in Reserve Fireman status is permissible so long as there is no conflict of interest. There shall be no offset for outside earnings.

(6) Vacation pay received while in Reserve Fireman status will offset pay received under paragraph (3). Time spent in reserve status will not count toward determining whether the employee is eligible for vacation in succeeding years. It will count as time in determining the length of the vacation to which an employee, otherwise eligible, is entitled.

(7) Reserve Firemen are not eligible for:

Holiday Pay
Personal Leave
Bereavement Leave
Jury Pay
Other similar special allowances

(8) Reserve Firemen are covered by:

Health and Welfare Plans
Union Shop
Dues Check-off
Discipline Rule Grievance Procedure

that are applicable to firemen (helpers) in active service.

(9) When junior employees are in 'Reserve Fireman' status, a senior active fireman may request such status. The carrier shall grant such a request and, at its discretion, recall the junior 'Reserve Fireman."

Section 2 - Establishing Brakeman Seniority

(1) Engine service employees not possessing ground service seniority as of November 1, 1985 shall be placed on the bottom of the appropriate ground service roster upon implementation of this Section. Such employees will be allowed to relinquish their newly acquired seniority during a ninety day period following such implementation.

(2) On or after November 1, 1985, any person establishing seniority in engine service without first establishing seniority as trainman will establish a seniority date as trainman on the date he or she establishes seniority in engine service.

(3) An employee establishing seniority as trainman under this Section 2 shall be permitted to exercise such rights only on the event he or she is unable to hold any position or assignment in engine service as engineer, fireman on a designated position in passenger service, hostler or hostler helper, and such employee shall not, by such placement, be given any present or protected employee rights under present crew consist agreements or any negotiated in the future.

(4) Provisions for implementing this requirement shall be agreed upon with the appropriate trainmen's representative on each carrier party hereto within 90 days following the date of this Agreement. If the parties are unable to agree, the matter shall be arbitrated at the request of either party under the following provisions:

(a) The parties will endeavor to agree upon an arbitrator. If they fail to agree, either may request the National Mediation Board to name an arbitrator.

(b) The authority of the arbitrator will be limited to deciding the procedures that will govern the placement of engine service employees on ground service seniority rosters including the determination of which rosters are appropriate.

(c) An award will be rendered within 45 days of the date the arbitrator is named.

Section 3 - Retention of Seniority

(1) Subject to the carrier's legal obligations, when selecting new applicants for engine service, opportunity shall first be given to employees in train and yard service on the basis of their relative seniority standing, fitness and other qualifications being equal. Transfer of engineers from one seniority district to another on the same railroad system will not be violative of this provision.

(2) Any person who is selected for engine service and does not have seniority as trainman will acquire seniority as trainman upon entering engine service, subject to paragraph (3) hereof.

(3) An employee who has established seniority as conductor (foreman), trainman (brakeman-yardman), hostler or hostler helper (but without seniority as a locomotive fireman) who is selected for engine service shall retain his seniority standing and all other rights in train and/or yard or hostling service. However, such employee shall be permitted to exercise such rights only in the event he or she is unable to hold any position or assignment in engine service as engineer, fireman on a designated position in passenger service, hostler or hostler helper.

(4) This Section 3 replaces and supersedes Article VIII of the August 25, 1978 National Agreement.

Section 4 - Promotion

The following principles will govern in the selection and promotion to engine service and conductor/foreman:

(1) Trainmen who established seniority prior to November 1, 1985 will be governed by existing rules with respect to promotion to conductor/foreman and will not be required to accept promotion to engine service.

(2) Trainmen who establish seniority on or after November 1, 1985 must accept promotion to conductor/foreman in proper turn.

(3) Trainmen who establish seniority on or after November 1, 1985 will be selected for engine service in accordance with Section 3 of this Article XIII. However, if a sufficient number of trainmen (including those promoted to conductor) do not make application for engine service to meet the carrier's needs, such needs will be met by requiring trainmen (including promoted conductors) who establish seniority on or after November 1, 1985 to take engine service assignments or forfeit seniority in train service.

(4) If the carrier's needs for engine service employees are not met during a period when there are not sufficient trainmen (including promoted conductors) in service with a seniority date on or after November 1, 1985 who must accept promotion to engine service or forfeit seniority in train service, the carrier may hire qualified engineers or train others for engine service.

Provisions for implementing these principles shall be agreed upon on each carrier party hereto within 90 days following the date of this Agreement. If the parties are unable to agree, the matter shall 1 be arbitrated at the request of either party under the following provisions:

(a) The parties will endeavor to agree upon an arbitrator. If they fail to agree, either may request the National Mediation Board to name an arbitrator.

(b) The authority of the arbitrator will be limited to deciding the procedures that will govern the promotion of trainmen and the forfeiture of seniority in the event of failure to qualify for promotion.

(c) An award will be rendered within 45 days of the date the arbitrator is named.

Section 5 - Application

Any conflict between the changes set forth herein and the provisions of the July 19, 1972 Manning Agreement, as revised, shall be resolved in accordance with the provisions of this Agreement.

* * * * * * * * * * * * *SIDE LETTERS* * * * * * * * * * * * * * * * *

15

October 31, 1985.

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This will confirm our understanding during the negotiations of the Agreement of this date that the term "active firemen, working as such", appearing in Section 1, Paragraph (11) of Article XIII, includes hostlers who have the right to work as locomotive engineers.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,
C. I. Hopkins, Jr.

I agree:
Fred A. Hardin
* *
*

16
Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This will confirm our understanding during the negotiations of the Agreement of this date that where hostler positions are filled by employees not having firemen's seniority, that before a carrier discontinues a hostler or hostler helper position pursuant to Article XIII, Section 1(10) of this Agreement, it will be offered to furloughed hostlers with seniority prior to November 1, 1985 in the same seniority district. If such hostlers only have point seniority and there are no furloughed hostlers at such point, but there are such hostlers on furlough with seniority prior to November 1, 1985 at another point in the same geographical area, a vacancy will be offered to such hostlers before a carrier discontinues a hostler or hostler helper position pursuant to Article XIII, Section 1(10) of this Agreement.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,
C. I. Hopkins, Jr.

I agree:
Fred A. Hardin
* *
17
October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue

Cleveland, Ohio 44107

Dear Mr. Hardin:

This will confirm our understanding during the negotiations of the Agreement of this date that before a carrier discontinues a hostler or hostler helper position pursuant to Article XIII, Section 1(10) of this Agreement, it will be offered to furloughed firemen with seniority in engine service prior to November 1, 1985 in the same seniority district. Such employees will retain recall rights to engine service in accordance with existing agreements.

Please indicate your agreement by signing in the space provided below.

Very truly yours,
C. I. Hopkins, Jr

I agree:
Fred A. Hardin

* * * * * * * * * * * * * * * * ** * * * * * * * * **

ARTICLE XIII (UTU) QUESTIONS & ANSWERS
Reserve Firemen

Q-1: Are preexisting rights of active firemen to exercise seniority restricted by reason of another active fireman having accepted reserve status?

A-1: No.

* * * * * * * * *

Q-2: Are there any conditions under which a furloughed fireman would be entitled to recall account an active fireman accepting "reserve" status?

A-2 : No.

* * * * * * * * * *

Q-3: If an extra board fireman accepts reserve fireman status will the other firemen on the extra board rotate (first in first-

out) on the basis of the reduced number of firemen on the extra board?

A-3: Nothing in the October 31, 1985 agreement changes the manner in which extra lists are manned or utilized. The provisions of Fireman - Manning Agreement of July 19, 1972 and interpretations thereof govern.

* * * * * * * * * *

Q-4: If a fireman on a fireman's extra board accepts reserve status, may another fireman working as a fireman exercise seniority to the extra board?

A-4: Nothing in the October 31, 1985 agreement changes the manner in which extra lists are manned or utilized. The provisions of Fireman - Manning Agreement of July 19, 1972 and interpretations thereof govern.

* * * * * * * * * *

Q-5: When a fireman who is on reserve fireman status is furloughed (no firemen's jobs or decline in business) and is later recalled under Article XIII Section 1(II)(2), must that fireman return to reserve fireman status?

A-5: No. However, if reserve fireman status is offered, it may be accepted.

* * * * * * * * * *

Q-6: May a fireman in reserve fireman status relinquish that status and return to service without being recalled?

A-6: No, unless the carrier and the general committee agree in advance that reserve fireman status will not exceed a fixed period of time, unless recalled earlier.

* * * * * * * * * *

Q-7: When calling a fireman from reserve fireman status, when does the seven (7) day time limit begin?

A-7: From either the date such notice is delivered as evidenced by return certified or registered receipt, or the date letter is postmarked at destination if returned unclaimed to the carrier.

* * * * * * * * * * *

Hostlers

Q-1: If existing rules require a UTU hostler position to be filled under what conditions may carrier discontinue such hostler position?

A-1: Only if no bids are received from a fireman (hostler) with seniority prior to November 1, 1985, in response to an offer pursuant to Letter No. 16 or 17, and the discontinuance of such position does not result in the furlough of a fireman (or hostler) who established seniority prior to November 1, 1985; or the establishment of a hostler position represented by another organization; or there are no firemen (or hostlers) with seniority prior to November 1, 1985 on furlough.

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Q-2: If there is a permanent vacancy for a hostler position and there are firemen (or hostlers) with seniority to fill such position, must a fireman be force assigned to such vacancy if no bids are received?

A-2: Yes, under Article IV, Section 3 of the July 19, 1972 Manning Agree-ment, unless the position is discontinued by carrier pursuant to Article XIII, Section 1(10)(b) of the October 31, 1985 Agreement.

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Q-3: Does Article XIII, Section 1(10)(b) of October 31, 1985 Agreement contemplate the use of other than UTU employees to fill temporary vacancies on UTU filled hostler positions?

A-3: No, unless prior to November 1, 1985, temporary vacancies were filled by employees of another organization under existing agreements or practices.

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Q-4: If there is a temporary vacancy on a UTU hostler position and there is an available extra fireman (or hostler) with seniority prior to November 1, 1985 at that point, must he be used?

A-4: Yes, unless prior to November 1, 1985, existing agreements

or practices provided otherwise.

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Q-5: If there is a temporary vacancy on a UTU filled hostler position and no extra hostler (fireman) is available, is a hostler (fireman) assigned on another shift at the same terminal considered available?

A-5: No, unless prior to November 1, 1985, existing agreements or practices provided otherwise.

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Q-6: If there is a temporary vacancy on a UTU filled hostler position and no extra hostler (fireman) is available, is a hostler (fireman) with seniority prior to November 1, 1985 on his rest day considered available?

A-6: Yes, unless local agreements provide for the use of another employee in such situations.

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Q-7: If hostlers are on a separate seniority roster and a ground service employee is forced to fill a bulletined UTU hostler position, does he establish seniority as a hostler?

A-7: No.

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Q-8: If a ground service employee is force assigned to a bulletined hostler position, when can such ground service employee vacate the position?

A-8: When he has an exercise of seniority under the rules applicable to ground service employees. However, he must remain on the hostler position until a junior ground service employee is qualified or the position is discontinued under Article XIII, Section 1(10)(b).

* * * * * * * * * *

Q-9: May the carrier discontinue a hostler position pursuant to Section 10(b) and have a yard crew perform hostling service as provided by Section 10(d) if such results in the furlough of a hostler (fireman) with seniority prior to November 1, 1985?

A-9: No, the conditions set forth in Section 10(b) apply.

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Miscellaneous

Q-1: Does the October 31, 1985 National Agreement change, amend or abrogate the UTU July 19, 1972 National Training Agreement?

A-1: No.

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Q-2: When trainmen or yardmen and employees from another craft are trans-ferred to engine service on the same date how should they be shown on the engine service roster?

A-2: Subject to a carriers legal obligations, employees transferring from another craft, (other than hostler, hostler helper, trainman or yardman) would be placed on the engine service roster on the date they transfer following trainmen and yardmen. If more than one employee transfers from other crafts on the same day, they will be placed on the engine service roster in the order of their earliest date on their craft roster.

Trainmen and yardmen would be offered the opportunity first to transfer to engine service and would be placed on engine service roster in accordance with their standing on train and yard service rosters. Should a trainman and/or yardman pass up transfer at their first opportunity, they would rank in seniority order in accordance with the applicable engine service agreement.

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

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE XIII - FIREMEN:

"1. Does Article XIII permit positions of Firemen to remain unfilled equivalent to the number of Firemen on 'reserve status' in instances where Firemen return from Engineer status or where runs employing a Fireman are abolished?"

FINDINGS:

In pursuance of Article XIII of the October 31, 1985 National Mediation Agreement, and amendments to the Fireman Manning Agreement of July 19, 1972, a Carrier may offer "reserve status" to any number of active Firemen, working as such, with seniority as Firemen prior to November 1, 1985. The active Firemen then have the option to either accept or decline such offer of reserve status.

When such reserve status is chosen, the individual electing such option must, among other conditions or obligations set forth in the Agreement, remain in such status until recalled to hostler or engine service. Each individual electing reserve status is meantime paid at 70 percent of the basic yard fireman's rate of pay for five days per week. Additionally, payments are made to or on behalf of a reserve fireman for premiums under applicable health and welfare plans.

The changes to the Fireman Manning Agreement also included, as is pertinent to consideration of the Question at Issue, a further, or new provision, which provides as follows:

"(4) Reserve Fireman shall be considered in active service for the purpose of this Fireman Manning Agreement, including application of the decline in business formula."

The above provision had the effect of amending a note to Article I, Section (f), of the July 19, 1972 Manning Agreement with respect to the definition of the term, "active service," by essentially adding reserve firemen as a category of employee to be considered as unavailable for service.

Peripheral to the instant dispute is whether or not a Carrier has a right to "blank" positions of firemen when active firemen accept "reserve fireman" status. Blanking a position that would otherwise be available to an employee is a restriction on

seniority. The parties have already agreed that pre-existing rights of active firemen to exercise seniority are not restricted by reason of another active fireman having accepted reserve status, and there are no conditions under which a furloughed fireman would be entitled to a recall account an active fireman accepting reserve status:

"Q-1 Are pre-existing rights of active firemen to exercise seniority restricted by reason of another active fireman having accepted reserve status?

A-1 No.

Q-2 Are there any conditions under which a furloughed fireman would be entitled to recall account an active fireman accepting 'reserve' status?

A-2 No. "

In view of the above considerations and the clear dictates of subparagraph (4), supra, a Carrier may elect not to fill positions of Firemen equal to the number of active Firemen who have elected to accept an offer of reserve status.

AWARD:

The Question at Issue is answered in the affirmative.

Richard R. Kasher, Arbitrator   Robert E. Peterson, Arbitrator
Washington, DC March 20, 1987

* ** * *

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

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE XIII - FIREMEN:

"2. Does Section 1(10) of Article XIII permit a Carrier to use other than employees represented by the United Transportation Union to make an incidental hostling move or moves of a locomotive?"

FINDINGS

Article XIII, Firemen, of the October 31, 1985 National Mediation Agreement prescribes the manner by which a carrier may discontinue using employees represented by the United Transportation Union as hostlers or hostler helpers. It stipulates, among other things, that discontinuance of the use of firemen (helpers) may not result in the furloughing of a Fireman who established seniority prior to November 1, 1985 nor the establishment of a hostler position represented by another organization.

No mention is made in Article XIII to the performance of incidental hostling work. However, there is nothing to suggest that it was the intent of the parties to necessarily have precluded performance of incidental hostling work by other than employees represented by the UTU.

Therefore, it may properly be concluded that incidental hostling work may be performed by other than employees represented by the UTU so long as the performance of such incidental work does not result in the furloughing of a fireman (helper) who established seniority prior to November 1, 1985, or the establishment of a hostler position represented by another organization.

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 times in one eight-hour tour of duty.. [and].. take no longer than five minutes to accomplish."

AWARD :

The Question at Issue is answered in the affirmative, subject to considerations as set forth in the above Findings.

Richard R. Kasher, Arbitrator Robert E. Peterson, Arbitrator
Washington, DC March 20, 1987

* *

JOINT INTERPRETATION COMMITTEE
ARTICLE XVI

NATIONAL MEDIATION AGREEMENT OF OCTOBER 31, 1985

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE XIII - FIREMEN:

"3. Did the Chicago and Northwestern Transportation Company violate Article XIII when it discontinued use of certain hostler and hostler helper assignments for the handling of locomotives in Chicago, Illinois in April 1986?"

FINDINGS

The record as presented does not permit full consideration of this dispute. Therefore, the Question at Issue will be remanded to the parties for further handling and development of all pertinent facts without prejudice to the right of resubmission of the dispute should it not meantime have been amicably resolved on the property.

AWARD

The Question at Issue is remanded to the parties.

Richard R. Kasher, Arbitrator   Robert E. Peterson, Arbitrator
Washington, DC March 20, 1987

* *

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

UNITED TRANSPORTATION UNION
AND
NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE XIII - FIREMEN:

"4. Can the Carriers abolish hostling positions under provisions of local and pre-existing rules if it results in a hostler with seniority prior to November 1, 1985 being furloughed or if there are furloughed hostlers who stand for this service?"

FINDINGS

Article XIII of the October 31, 1985 National Mediation Agreement provides that the craft or class of firemen (helpers) shall be eliminated through attrition. It gives special recognition to employees whose seniority as such was established prior to November 1, 1985.

In regard to hostling service, and more especially as concerns firemen (helpers) who established seniority prior to November 1, 1985, Article XIII states the Fireman Manning Agreement of July 19, 1972 is amended to provide, among other things, as follows:

"(a) Except as modified hereinafter, assignments in hostling service will continue to be filled when required by agreements in effect on individual carriers.

(b) The carrier may discontinue using employees represented by the United Transportation Union as hostlers or hostler helpers provided that it does not result in furlough of a fireman who established seniority prior to November 1, 1985 nor the establishment of a hostler position represented by another organization, and provided, further, that this provision will not act to displace any employee who established seniority prior to November 1, 1985 and who has no right to service except as hostler or hostler helper.

(c) Employees in engine service who established seniority prior to November 1, 1985 will continue to fill hostler and hostler positions and vacancies thereon in accordance with agreements in effect as of that date. If such position cannot be filled by such employees, and it is not discontinued pursuant to Paragraph (b) above, qualified train service employee will be used. .. ."

In accordance with Article XIII, and the general intent expressed in Side Letters of Agreement Nos. 16 and 17 to the October 31, 1985 National Mediation Agreement, it must be concluded that local and pre-existing rules involving the abolishment of hostler positions continue to have force and effect only if such rules do not cause a fireman (helper) who established seniority prior to November 1, 1985 to be placed in

or remain in a furloughed status.

AWARD:

The Question at Issue is answered in the negative.

Richard R. Kasher, Arbitrator   Robert E. Peterson, Arbitrator
Washington, DC March 20, 1987

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MEMORANDUM OF AGREEMENT between The Atchison, Topeka and Santa Fe Railway Company and the United Transportation Union (Conductors, Trainmen and Yardmen's Committees).

Pursuant to Article XIII, Sections 2 and 4, of the UTU National Agreement dated October 31, 1985, it is agreed:

1. Engine service employes who have not established seniority as trainmen/yardmen will be placed at the bottom of the seniority roster(s) for trainmen/yardmen for the seniority district where they hold seniority as firemen with a seniority date of January 29, 1986.

2. They will be placed on the appropriate trainmen and yardmen seniority roster(s) based on relative seniority standing as firemen.

3. If the existing firemen seniority district encompasses more than one trainmen/yardmen seniority district, they will be placed on all trainmen/yardmen seniority districts which include the territories in their firemen seniority district.

4. If there are any firemen with identical seniority dates on separate firemen seniority rosters, they will be placed on the appropriate trainmen/yardmen's seniority roster(s) on the basis of their age. Should firemen from different rosters have the same seniority date, the age of the employe will apply in determining the senior employe on the trainmen/yardmen rosters, provided this will not result in a change in the relative standing that firemen held on their firemen rosters. If the latter should occur, Carrier and Organization will agree on proper standing.

5. Firemen who establish seniority as provided herein as

trainmen/yardmen will be allowed to relinquish such newly acquired seniority provided they notify, in writing, the appropriate Superintendent(s) having jurisdiction in the territory in which they acquire seniority as trainman/yardman within ninety (90) days following the date of this agreement.

6. On or after November 1, 1985, any employe establishing seniority in engine service without first establishing seniority as trainman will establish a seniority date as trainman/yardman on the date he or she establishes seniority in engine service.

7. Firemen establishing seniority as trainmen/yardmen under Article XIII of the UTU National Agreement dated October 91, 1985, and this implementing agreement shall be permitted to exercise such rights only in the event he or she is unable to hold any position or assignment in engine service, and such employee shall not, by such placement, be given any "present or protected employee" rights under present crew consist agreements or any negotiated in the future.

8. Trainmen/yardmen who establish seniority on or after November 1, 1985, will be selected for engineer service in accordance with Section 3 of Article XIII of the UTU National Agreement dated October 31, 1985. However, if a sufficient number of trainmen/yardmen (including those promoted to conductor) do not make application for engine service to meet the Carrier's needs, such needs will be met by requiring trainmen/yardmen (including promoted conductors) who establish seniority on or after November 1, 1985, to accept training and promotion to loco- motive engineer in reverse seniority order or forfeit seniority in train and yard service.

9. Trainmen/yardmen who are selected for engine service pursuant to Article XIII of the UTU National Agreement dated October 31, 1985, as implemented by this agreement, will be required to accept training and promotion to locomotive engineer pursuant to Carrier's Engineer Training Program then in effect.

10. An employe who establishes seniority both as a conductor and engineer will be required to work as an engineer, if he stands for service as an engineer, in preference to working as a conductor.

Signed at Chicago, Illinois, this 1st day of MAY, 1986.

FOR THE UNITED TRANSPORTATION UNION

MR HICKS
General Chairman

FOR THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY
JOHN P FRESTEL JR.
Vice President -Personnel and Labor Relations

APPROVED

PAUL C. THOMPSON
Vice President, UTU

* * * * * * * * * * *

Eastern and Western Lines (Excluding Northern and Southern Divisions)

*Firemen Establishing Trainmen/Yardmen Seniority as of January 29, 1986 pursuant to the October 31, 1985 UTU National Agreement

1. Firemen appearing on the Chicago Terminal roster will be placed on the bottom of the yardmen's roster at that location with a seniority date of January 29, 1986 in the same relative standing they hold as firemen.

2. Firemen appearing on the First and Second Districts, Illinois Division, road and yard rosters, will be placed on the bottom of the trainmen's and yardmen's rosters for that territory with a seniority date of January 29, 1986, their relative standing on both rosters to be based on their earliest date (road or yard) as a fireman.

3. Firemen appearing on the Third and Fourth Districts, Illinois Division, road and yard rosters, will be placed on the bottom of the trainmen's and yardmen's rosters for that territory with a seniority date of January 29, 1986, their relative standing on both rosters to be based on their earliest date (road or yard) as a fireman.

4. Firemen appearing on the Kansas City - Eastern Division road and yard rosters, will be placed on the bottom of the Kansas City yardmen's roster with a seniority date of January 29, 1986, their relative standing to be based on their earliest date (road or yard) as a fireman.

9. Firemen appearing on the Kansas City - Eastern and Southern Kansas road and yard rosters, will be placed on the bottom of the

original Eastern and Southern Kansas trainmen's and yardmen's rosters for that territory with a seniority date of January 29, 1986, their relative standing on these rosters to be based on their earliest date (road or yard) as a fireman.

6. Firemen appearing on Seniority District No. 1, Middle Division, road and yard rosters, will be placed on the bottom of the train-men's and yardmen's rosters for that territory with a seniority date of January 29, 1986, their relative standing on both rosters to be based on their earliest date (road or yard) as a fireman.

7. Firemen appearing on Seniority District No. 2, Middle Division, road and yard rosters, will be placed on the bottom of the train-men's and yardmen's rosters for that territory with a seniority date of January 29, 1986, their relative standing on both rosters to be based on their earliest date (road or yard) as a fireman.

8. Firemen appearing on Seniority District No. 3, Middle Division, road and yard rosters, will be placed on the bottom of the trainmen's and yardmen's rosters for that territory with a seniority date of January 29, 1986, their relative standing on both rosters to be based on their earliest date (road or yard) as a fireman.

9. Firemen appearing on the Colorado Division First, Pueblo and Denver District, road and yard rosters, will be placed on the bottom of the trainmen's and yardmen's rosters for the Pueblo and Denver Districts with a seniority date of January 29, 1986, their relative standing on these rosters to be based on their earliest date (road or yard) as a fireman.

10. Firemen appearing on the Colorado Division First, Pueblo and Denver Districts, road and yard rosters, will be placed on the bottom of the Colorado Division First District trainmen's and yardmen's rosters with a seniority date of January 29, 1986, their relative standing on these rosters to be based on their earliest date (road or yard) as a fireman.

11. Firemen appearing on the Original Panhandle District, Plains Division, road and yard rosters, will be placed on the bottom of the trainmen's and yardmen's rosters for that territory, with a seniority date of January 29, 1986, their relative standing on both rosters to be based on their earliest date (road or yard) as a fireman.

12. Firemen appearing on the Original Plains and former Slaton seniority districts, Plains Division, road and yard rosters, will be placed on the bottom of the trainmen's and yardmen's rosters for that territory, with a seniority date of January 29, 1986, their relative standing on these rosters to be based on their earliest date (road or yard) as a fireman.

13. Firemen appearing on the Second, Third and Fourth Districts of the Colorado Division, El Paso District of the New Mexico Division and former Pecos Division, road and yard rosters, will be placed on the bottom of the trainmen's and yardmen's rosters for that territory with a seniority date of January 29, 1986, their relative standing on these rosters to be based on their earliest date (road or yard) as a fireman.

* - Excludes firemen holding seniority as trainmen or yardmen prior to November 1, 1985

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February 7, 1986 43-1960-63

Mr. M. R. Hicks, General Chairman
United Transportation Union (CT&Y)
8100 Marty, Suite 100
Overland Park, Kansas 66204

Mr. C. P. Sawyer, General Chairman
United Transportation Union (CT&Y)
P.O. Box 1687
Brownwood, Texas 76801

Mr. A. G. Delyea, General Chairman
United Transportation Union (CT&Y)
2110 E. First Street, Suite 121
5anta Ana, California 92705

Mr. J. E. Thomas, General Chairman
United Transportation Union (CT&Y-E)
117 S. Elm
Washington, Illinois 61571

Gentlemen:

Referring to proposed agreement furnished with my letter of January 24,
1986, in connection with Article XIII of the October 31, 1985 UTU

National Agreement.

This will confirm our understanding that firemen placed on the brakemen/yardmen seniority rosters as a result of Article XIII, Section 2, of the October 31, 1985 National Agreement will not be considered ground service employes in determining the number of brakemen/yardmen to be used on a road and/or yard crew(s) under the Crew Consist Agreement when such employes are working as firemen.

If the foregoing correctly sets forth the understanding reached, please signify by signing in the space provided below.

Yours truly,

JOHN P. FRESTEL JR.
Vice President - Personnel and Labor Relations

ACCEPTED:

M R HICKS
General Chairman UTU/CTY
May 1, 1986

PAUL C. THOMPSON
Vice President, UTU
APPROVED

ARTICLE XIV - EXPENSES AWAY FROM HOME

Effective November 1, 1985, the meal allowance provided for in Article II, Section 2 of the June 25, 1964 National Agreement, as amended, is increased from $3.85 to $4.15.

ARTICLE XV - BENEFITS PROVIDED UNDER THE RAILROAD EMPLOYEES NATIONAL
HEALTH AND WELFARE PLAN

Section 1 - Continuation of Plan

Except as provided in this Article, the benefits and other provisions under the Railroad Employees National Health and Welfare Plan will be continued. Contributions to the Plan will be offset by the expeditious use of such amounts as may at any time be in Special Account A or in one or more special accounts or funds maintained by the insurer in connection with Group Policy Contract GA-23000, and by the use of funds held in trust that are not otherwise needed to pay claims, premiums or administrative expenses which are payable from trust.

Section 2 - Benefit Changes

The following changes in benefits provided under the Plan and in matters related to such benefits will be made:

(a) Hospital Pre-Admission & Utilization Review program - This program shall include a comprehensive guidance and support structure for employees and other beneficiaries covered by the Plan and their physicians beginning prior to planned hospitalization and continuing through recovery period. The program shall include, among other things, review of the propriety of hospital admission (including the feasibility of ambulatory center or out-patient treatment), the plan of treatment including the length of confinement, the appropriateness of a second surgical opinion, discharge planning and the use of effective alternative facilities during convalescence. Reduced benefits will be provided if the program is not fully complied with. This program shall become effective not earlier than January 1, 1986 in order to provide adequate time to set up and communicate the program.

(b) Extension of Benefits - Vacation pay received by a furloughed employee shall not qualify such employee for any benefits under the Plan and will not generate premium payments on his behalf. This change shall become effective January 1, 1988.

(c) Reinsurance - Reinsurance will be discontinued not later than December 31, 1985.

Section 3 - Special Committee

(a) A Special Committee selected by the parties will be established for the purpose of reviewing and making recommendations concerning ways to contain health care costs consistent with maintaining the quality of medical care; and reviewing the existing Plan structure and financing and making recommendations in connection therewith. In addition, the Committee may review and make recommendations with respect to any other matter included in the parties' notices with respect to the health care plan.

(b) The Committee shall retain the services of a recognized 1 expert on health care systems to serve as a neutral chairman. The fees and expenses of the chairman shall be paid by the parties.

(c) The Committee shall be convened as promptly as possible and meet periodically until all of the matters that it considers are resolved. However, if the Committee has not resolved all issues by May 1, 1986, the neutral chairman will make recommendations on such unresolved issues no later than June 1, 1986. Upon voluntary resolution of all issues, or upon issuance of recommendations by the neutral chairman, whichever is later, the Committee shall be dissolved.

(d) The proposals of the parties concerning health benefits (specifically, the organization's proposals dated January 23, 1984, entitled "Revise Contract Policy GA-23000" and the carriers' proposals dated on or about January 12, 1984, entitled "C. Insured Benefits") shall not be subject to the moratorium provisions of this Agreement, but, rather, shall be held in abeyance pending efforts to resolve these issues through the procedure established above. If, after 60 days from the date the neutral Chairman makes his recommendations, the parties have not reached agreement on all unresolved issues, the notices may be progressed under the procedures of the Railway Labor Act, as amended.

(e) Agreement reached by the parties on these issues will provide for a contract duration consistent with the provisions of Article XVII of the Agreement, regardless of whether such agreement occurs during the time that the proposals of the parties are held in abeyance or subsequent to the time that they may be progressed in accordance with the procedures of the Railway Labor Act as provided for above.

* * * * * * * * * *SIDE LETTERS* * * * * * * * * * * * * * * *
18
October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This confirms our understanding with respect to incorporating a hospital Pre-Admission and Utilization Review Program as part of the benefits provided under the Railroad Employees National Health and Welfare Plan in accordance with Article XV, Section 2(a) of the Agreement of this date.

By agreeing to this benefit program, our principal objectives are to reduce in-patient hospital utilization thereby minimizing exposure to risks of hospitalization or unduly prolonged hospitalization and the risks of unnecessary surgery by encouraging both employee and physician to make the most patient-sensitive and at the same time cost-effective decisions about treatment alternatives.

The program accomplishes these objectives by providing to employees and other beneficiaries ready access to knowledgeable professional personnel when making decisions about their health care. A number of patient-centered services are provided and designed in a manner so as not to impose significant added burdens on individual employees. The comprehensive guidance and support structure begins prior to planned hospitalization and continues through any recovery period.

Specifically, the program shall include review of the propriety of hospital admission (including consideration of health care alternatives such as the use of ambulatory centers or out-patient treatment) benefit counseling, the plan of treatment including the length of confinement, the appropriateness of a second surgical opinion, discharge planning and the use of effective alternative facilities during convalescence.

We have attached to this letter descriptions of programs currently offered by three leaders in this field that describe in greater detail the operations of these programs and what specifically is involved. These attachments are intended as

informational only, describing the kind of program we will establish, and do not suggest that the program we ultimately adopt is limited to what is described or is to be administered by these particular parties.

In order that the program achieves its intended objectives, we have agreed to institute appropriate incentives. For those employees who use the program, plan benefits will be paid as provided and the employee and family will receive the full protection and security of professionals managing their hospital confinement and recovery. For employees who do not use the program, plan benefits will be paid only under the Major Medical Expense Benefit portion of the Plan with the Plan paying 65%, rather than 80%, of covered expenses. However, a maximum total employee expense limitation -"stop-loss "- will be maintained.

We recognize that the program described cannot be implemented overnight but will require careful review and examination on the part of us all and will include, as well, time to inform the employees and other beneficiaries covered under the Plan. Furthermore, it is anticipated that the program will include use of alternative facilities, such as home health care options, hospices, office surgery, ambulatory surgi-centers and birthing centers, some of which are either not covered under the Plan now or are not available in the manner envisioned under this new program. Thus, for these reasons we have agreed that implementation of the program will not occur earlier than January 1, 1986 and that the intervening time will be used to assure that its adoption shall be a constructive and useful addition to the benefits currently provided under the Plan.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,
C. I. Hopkins, Jr.

Attachments (Descriptive material furnished UTU)

I agree:
Fred A. Hardin

* *

20
October 31, 19@5

Mr. Charles I. Hopkins, Jr.
Chairman
National Railway Labor Conference
1901 L Street, N.W., Suite 500
Washington, DC 20036

Dear Mr. Hopkins:

This is to advise you that I am agreeable to the provisions of Article XV Health and Welfare Plan except that in Section 2 (a), Hospital Pre-Admission and Utilization Review Program, I will agree to the concept of the Pre-Admission and Utilization Review Program and will agree to its implementation after the Policyholders have met jointly with representatives of Travelers and have agreed on the changes and understandings that will be necessary to implement the program. There must be ample lead time to insure that all covered employees can be notified of the implementation date and will have adequate information about the plan so that they can comply with their responsibilities in the event they qualify for benefits under the plan.

I take no exceptions to the use of surplus funds, the Reinsurance proposal, the Special Committee and/or the moratorium proposals.

Very truly yours,
Fred A. Hardin
* *

21
October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This confirms our understanding with respect to incorporating a Hospital Pre-Admission and Utilization Review Program as part of the benefits provided under the Railroad Employees National Health and Welfare Plan in accordance with Article XV, Section 2(a) of the Agreement of this date.

We recognize that a similar program would be equally appropriate to include as part of the Early Retirement Major Medical Benefit

Plan.

Therefore, this confirms our understanding that the program developed for the Health and Welfare Plan shall also be incorporated, with appropriate revisions, if necessary, as part of the Early Retirement Major Medical Benefit Plan as well.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,
C. I. Hopkins, Jr.

I agree:
Fred A. Hardin

* *

ARTICLE XVI - JOINT INTERPRETATION COMMITTEE

Disputes arising over the application or interpretation of this agreement will, in the absence of a contrary provision, be referred to a Joint Interpretation Committee consisting of an equal number of representatives of both parties.

If the Committee is unable to resolve a dispute, it may consider submitting the dispute to arbitration on a national basis for the purpose of ensuring a uniform application of the provisions of this Agreement.

* * * * * * * * * * * * *SIDE LETTER* * * * * * * * * * * * * * *
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19

October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

This confirms our understanding with respect to the appointment of a neutral person to serve as chairman of the Special Committee established pursuant to Article XV, Section 3, of the Agreement of this date.

In the event we are unable to agree on such a person, the parties will seek the assistance of an appropriate third party for the purpose of providing assistance in identifying individuals qualified to serve in this capacity.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,
C. I. Hopkins, Jr.

I agree:
Fred A. Hardin

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ARTICLE XVII - GENERAL PROVISIONS

Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement and is in settlement of the dispute growing out of the notices served upon the carriers listed in
Exhibit A by the organization signatory hereto dated on or about January 3, 1984 and January 23, 1984, and the notices served on or about January 12, 1984 by the carriers for concurrent handling therewith.

(b) This Agreement shall be construed as a separate agreement by and on behalf of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through June 30, 1988 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(c) Except as provided in Sections 2(d) and (e) of this Article, the parties to this Agreement shall not serve nor progress prior to April 1, 1988 (not
to become effective before July 1, 1988) any notice or proposal for changing any matter contained in:

(1) this Agreement,

(2) the proposals of the parties identified in Section 2(a) of this Article, and

(3) Section 2(c) of Article XV of the Agreement of January 27, 1972,

and any pending notices which propose such matters are hereby withdrawn.

(d) The notices of the parties referred to in Article XV of this

Agreement may be progressed in accordance with the provisions of Section 3(d) of that Article.

(e) Mew notices or pending notices that are permitted under the terms of the Letter Agreement of this date concerning intercraft pay relationships shall be governed by the terms of that Letter Agreement.

(f) Pending notices and new proposals properly served under the Railway
Labor Act covering subject matters not specifically dealt with in Sections 2(c), 2(d) and 2(e) of this Article and which do not request compensation
may be progressed under the provisions of the Railway Labor Act, as amended.

(g) This Article will not bar management and committees on individual railroads from agreeing upon any subject of mutual interest.

SIGNED AT WASHINGTON, D.C. THIS 31ST DAY OF OCTOBER, 1985.

FOR THE PARTICIPATING CARRIERS FOR THE EMPLOYEES REPRESENTED BY
LISTED IN EXHIBIT A: (Signatures not reproduced)
THE UNITED TRANSPORTATION UNION:(Signatures not reproduced)

* * * * * * * * * * * SIDE LETTER* * * * * * * * * * * * * *

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October 31, 1985

Mr. Fred A. Hardin
President
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Hardin:

In accordance with our understanding, this is to confirm that on a carrier where compensation relationships between the engineer and other members of the crew have been changed because of a crew consist agreement, the organization may serve and pursue to a

conclusion as hereafter provided proposals pursuant to the provisions of the Railway Labor Act seeking to adjust such compensation relationships for an engineer operating without a fireman. Pending proposals that meet these criteria may also be pursued in accordance with these provisions.

Any additional allowance shall be payable only where the engineer works with a reduced train crew and without a fireman and, where payable, shall be limited in amount so that when combined with the current differential
payable to an engineer working without a fireman, the total amount for that trip or tour of duty shall be no greater than the allowance paid to members of that reduced crew unless the present engineer allowance for working without a fireman is greater.

Where the organization serves such a proposal or progresses a pending proposal as above provided, the carrier may serve proposals pursuant to the provisions of the Railway Labor Act for concurrent handling therewith that would achieve equivalent productivity improvements and/or cost savings.

In the event the parties on any carrier are unable to resolve the respective proposals by agreement, the entire dispute will be submitted to final and binding arbitration at the request of either party.

Article XVII, Section 2(c) of the Agreement of this date shall not apply to the proposals described above.

Except as otherwise provided in this letter, proposals to change compensation are barred by Article XVII, Section 2(c) and any such pending proposals are withdrawn.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,
C. I. Hopkins, Jr.

I agree:
Fred A. Hardin

* *

October 31, 1985

APPLICATION OF LETTER AGREEMENT WITH RESPECT TO INTERCRAFT PAY RELATIONSHIPS*

The following examples illustrate the maximum allowances that can be
obtained under the letter agreement of this date with respect to intercraft pay relationships:

Example 1 - An engineer is on a reduced crew operating a distance of 127 miles in a class of service which has a basic day encompassing 102 miles. There is no fireman on the crew. The time consumed on the trip is 9 hours. No duplicate time payments expressed in hours or miles are paid. The conductor is receiving a reduced crew allowance of $7.10. What would the engineer be paid.

A. The standard rule for operating without a fireman would him $5.00. Since this is less than the amount the conductor is receiving, the engineer would be paid an additional $2.10.

Example 2 - What would the engineer in example 1 be paid if the allowance paid to the conductor was subsequently increased to $8.00?

A. The engineer would be paid an additional $3.00.

Example 3 - What would the allowance be if the engineer in example 1 were on an assignment operating a distance of 202 miles?

A. The standard rule for operating without a fireman would the engineer $8.00. Since this is more than the amount the conductor is receiving, the engineer would receive nothing additional.

Example 4 - What would the allowance be if the engineer in example 1 had earned two hours and forty minutes overtime on the trip?

A. The standard rule for operating without a fireman would the engineer as follows:

Basic Day $4.00
Over-miles (25) 1.00
Overtime (2 hrs., 40 mins.) 2.00

TOTAL $7.00

This is $.10 less than what the conductor received, so the engineer would be paid an additional $.10.

*NOTE: The amount of over-miles shown in the examples are on the basis of a 102 mile day. The number of over-miles will be further reduced in
accordance with the application of Article IV, Section 2 of this Agreement.

* *

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

UNITED TRANSPORTATION UNION
AND NATIONAL CARRIERS ' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE XVII - GENERAL PROVISIONS:

"Is a Section 6 Notice requesting employee protection in the event of
merger, sale, lease or any other transactions which may result in an adverse affect to the employees of a carrier prohibited under the provisions of Article XVII?"

FINDINGS

Article XVII, Section 2, Effect of this Agreement, of the October 31, 1985 National Mediation Agreement provides in pertinent part as follows with respect to the Question at Issue:

" (a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement and is in settlement of the dispute growing out of the notices served upon the carriers listed in
Exhibit A by the organization signatory hereto dated on or about January 3, 1984 and January 23, 1984, and the notices served on or about January 12, 1984 by the carriers for concurrent handling therewith.

* * * * * * * *

(c) Except as provided in Sections 2(d) and (e) of this Article, the parties to this Agreement shall not serve nor progress prior to April 1, 1988 (not
to become effective before July 1, 1988) any notice or proposal for changing any matter contained in:

(1) this Agreement,

(2) the proposals of the parties identified in Section 2(a) of this Article, and

(3) Section 2(c) of Article XV of the Agreement of January 27, 1972,

and any pending notice which propose such matters are hereby withdrawn. "

The Organization's notice of January 3, 1984, referenced in both Section
2(a) and 2(c) (2) above, included a proposal identified as Item 15, Protection of Employees, which read as follows:

"Effective July 1, 1984, establish a rule to provide that: Employees shall not be deprived of employment or have their earnings opportunities reduced or otherwise adversely affected by reason of Carrier abandonment, bankruptcy and/or reorganization, sale, lease, purchase or acquisition of lines or parts of lines, by merger, coordination, consolidation, traffic rerouting or diversion, contracting out or by reason of any other action resulting in adverse changes in the character of their employment."

Since Item 15 of the Organization's Section 6 Notice of January 3, 1984, supra, encompassed subject matter similar to that referenced in the Question at Issue as set forth above, we think it clearly evident that any Section 6 Notice embodying such like general subject matter must be held to fall within the purview of the moratorium provisions of Section 2 (c) of Article XVII, supra, and can neither be served nor progressed prior to April 1, 1988.

AWARD:
The Question at Issue is answered in the affirmative.

Richard R. Kasher, Arbitrator

Robert E. Peterson, Arbitrator Washington, DC

March 20, 1987

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October 31, 1985

JOINT STATEMENT CONCERNING EFFORTS TO IMPROVE THE COMPETITIVE ABILITIES OF THE INDUSTRY

This refers to our discussions during the recent negotiations with respect to improving our industry's ability to compete effectively with other modes of transportation and to attract new business to the railroads.

We recognize that opportunities will present themselves on railroads to promote new business and preserve existing business by providing more efficient and more expedient service. It is our mutual objective to provide this improved service by making changes, as may be necessary, in operations and with agreement rule exceptions and accommodations in specific situations and circumstances.

It is difficult to list specific rules or operations that might need modifications or exceptions in order to provide the services that may be necessary to obtain and operate new business that can be obtained from other modes of transportation. We are in agreement, however, that necessary operational changes and rules modifications or exceptions should be encouraged to obtain new business, preserve specifically endangered business currently being hauled, or to significantly improve the transit time of existing freight movements.

We recognize that attracting new business and retaining present business depends not only on reducing service costs, but also on improving service to customers.

The Joint Interpretation Committee will encourage expedited resolutions on individual railroads consistent with these goals and will provide counsel, guidelines and other assistance in making necessary operational and or agreement rule changes to provide the type service necessary to meet these goals.

We sincerely believe that cooperation between the management and the employees will result in more business and job opportunities and better service which will insure our industry's future strength and growth.

F. A. Hardin
President
United Transportation Union

C. I.Hopkins, Jr.
Chairman
National Carriers'
Conference Committee