FRED A. HARDIN
International President

JMAS J. McGUIRE
eral Secretary and Treasurer

united transportation union

14600 DETROIT AVENUE
CLEVELAND, OHIO 44107-4250
PHONE: 216-228-9400

(SM)

March 25, 1987

LETTER NO. WR-16-84

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

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

Dear Chairpersons:

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

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

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

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

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

Fraternally yours,

Fred A Hardin

President

Enclosures

cc: International Officers

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

ARTICLE I - GENERAL WAGE INCREASES

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

ARTICLE IV - PAY RULES (1)

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

ARTICLE IV - PAY RULES (2) AND INTERPRETATION

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

ARTICLE IV - PAY RULES (3)

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

ARTICLE V - FINAL TERMINAL DELAY (1) AND INTERPRETATION

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

ARTICLE V - FINAL TERMINAL DELAY (2)

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

ARTICLE V - FINAL TERMINAL DELAY (3)

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

ARTICLE V - FINAL TERMINAL DELAY (4)

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

ARTICLE VI - DEADHEADING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IX - INTERDIVISIONAL SERVICE (1)

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

ARTICLE IX - INTERDIVISIONAL SERVICE (2)

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

ARTICLE XIII - FIREMEN (1)

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

ARTICLE XIII - FIREMEN (2)

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

ARTICLE XIII - FIREMEN (3)

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

ARTICLE XIII - FIREMEN (4)

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

*

ARTICLE XVII - GENERAL PROVISIONS

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

* 2 NEW AWARDS - MAY 1, 1989

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

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

UNITED TRANSPORTATION UNION
AND
NATIONAL CARRIERS' CONFERENCE COMMITTEE

QUESTION AT ISSUE:

ARTICLE I - GENERAL WAGE INCREASE:

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

FINDINGS:

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

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

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

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

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

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

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

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

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

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 should be utilized to provide for appropriate adjustments to protective 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. Subsequent 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 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

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

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 interdivisional service that it was intended there be complete uniformity relative to the application of all pay rules to interdivisional 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 interdivisional runs.

AWARD:

The Questions at Issue are 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

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

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
Richard R. Kasher, Arbitrator

Robert E. Peterson
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 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 Broterhood 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
Richard R. Kasher, Arbitrator

Robert E. Peterson
Robert E. Peterson, Arbitrator

Washington, DC
March 20, 1987

JOINT INTERPRETATION COMMITTEE
ARTICLE VI
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 dispose 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

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 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 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

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, Deadheading, of the October 31, 1985 National Mediation Agreement to suggest that such Article would not have application to either existing interdivisional service or new interdivisional runs established under Article IX, Interdivisional Service, to the same extent that such Article VI would be applicable to all other through freight service.

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

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 adop-

tion 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

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
Richard R. Kasher, Arbitrator

Robert E. Peterson
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):

"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
Richard R. Kasher, Arbitrator

Robert E. Peterson
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):

"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

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), supra, 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

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

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

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 ac-

cept "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
Richard R. Kasher, Arbitrator

Robert E. Peterson
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

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

united
transportation
union

(SM)

June 29, 1987

LETTER NO. WR-16-84
Supplement #1

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

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

Dear Chairpersons:

Enclosed you will find copy of Interpretation of Awards rendered by Arbitrators Richard R. Kasher and Robert E. Peterson regarding the application of their Awards involving Question No. 2 (Article IV) pertaining to overtime in Interdivisional Service and Question No. 1 (Article V) determining the point for Final Terminal Delay.

The Board ruled in favor of the UTU in both cases by holding that ". . . the Committee intended for its Award to be applied on a retroactive basis rather than on a prospective basis only."

The interpretations were made necessary by the Carriers' insistence that the initial Awards were only to be applied on a prospective basis and had no application to any claims for payment which had been pending since November 1, 1985. The Board rejected this contention in its entirety and you should now make the necessary arrangements with your respective railroads to insure the prompt payment of all outstanding claims in connection herewith.

Fraternally yours,

Fred A. Kaufer

President

Enclosures

cc: International Officers

INTERPRETATION NO. 1
QUESTION NO. 2 (ARTICLE IV)

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

UNITED TRANSPORTATION UNION
AND
NATIONAL CARRIERS' CONFERENCE COMMITTEE

In the Committee's Findings and Award, issued under date of March 20, 1987, it was held:

> "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 estab lished prior to October 31, 1985."

The above determination contemplated resolution of a dispute regarding a question as to whether Section 2(c) of Article IV amended or altered the method of computing overtime under existing interdivisional run agreements or for new interdivisional runs established under Article IX of the October 31, 1985 National Mediation Agreement.

The Committee's decision was based upon what it determined to be the meaning and intent of Article IV as adopted into the Agreement under date of October 31, 1985, rather than how such provisions might be applied in the future by reason of an award.

Under the circumstances, there is no question but that the Committee intended for its Award to be applied on a retroactive basis rather than on a prospective basis only.

Richard R. Kasher, Arbitrator

Robert E. Peterson, Arbitrator

Washington, DC
June 23, 1987

INTERPRETATION NO. 1
QUESTION NO. 1 (ARTICLE V)

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

UNITED TRANSPORTATION UNION
AND
NATIONAL CARRIERS' CONFERENCE COMMITTEE

In the Findings and Award issued under date of March 20, 1987, this Committee 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.

The relevant factors and circumstances upon which this Committee based its decision was, as stated in the Findings, in keeping with: (1) The desire expressed by the Carriers to Arbitration Board No. 458 that the final terminal delay point for employees represented by the Brotherhood of Locomotive Engineers be identical to the final terminal delay point for employees who are represented by the United Transportation Union in the October 31, 1985 National Mediation Agreement; and, (2) The apparent belief of Arbitration Board No. 458 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.

Essentially, this Committee concluded that Arbitration Board No. 458, on the basis of representations made to it, had determined it appropriate to amend the tentative settlement between the Carriers and the Brotherhood of Locomotive Engineers so as to have the location of the final terminal delay point conform to that same point as intended by the framers of the October 31, 1985 National Mediation Agreement.

The Findings and Award, therefore, contemplated resolution of a dispute as to the proper intent and meaning of existing contract language, as in a rights dispute, rather than the need for establishing a new rule, as in an interest arbitration.

In this latter regard, a cover letter accompanying release of the Committee's Award in this and other disputes, stated:

> "It is our since hope that the enclosed decisions will be accepted by the parties in good faith and will be implemented promptly so that the vast majority of issues

which you have raised, some of which have been pending for a substantial period of time, will be firmly laid to rest.

The decisions represent literal interpretations of the Agreement reached through the exercise of our best abilities in the context of the broad scope and specific language of the October 31, 1985 National Mediation Agreement, the overlay of predecessor agreements, and the underlying intentions of the parties."

Accordingly, there is no question but that the Committee intended for its Award to be applied on a retroactive basis rather than on a prospective basis only.

Richard R. Kasher
Richard R. Kasher, Arbitrator

Robert E. Peterson, Arbitrator

Washington, DC
June 23, 1987

FRED A. HARDIN
International President

C. THOMAS DuBOSE
Vice President

THOMAS J. McGUIRE
General Secretary and Treasurer

united transportation union

14600 DETROIT AVENUE
CLEVELAND, OHIO 44107-4250
PHONE: 216-228-9400

(SM)

May 12, 1989

LETTER NO. WR-16-84
Supplement #2

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

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

Dear Chairpersons:

Enclosed you will find copy of the final Awards rendered by Arbitrators Richard R. Kasher and Robert E. Peterson involving disputes over the application of Article XIII of the 1985 National Agreement. As you know, Messers. Kasher and Peterson were two of the members of Emergency Board No. 208.

These disputes have been pending before the Arbitration Board for many months and it is intended that these awards will be used as a means to resolve all like disputes. You will note that the several listed disputes, as well as some others, have been defined as local issues and must be resolved on the individual properties in the most expeditious manner.

Quite frankly, we wanted you to have the benefit of these Awards, although the intent of the Award pertaining to the hostler and hostler helper positions is not thoroughly understood.

We fully intend to schedule a meeting in the near future with representatives of the NRLC and the Board members for the purpose of reviewing the Awards and so that there may be a thorough understanding of the Awards by all concerned. As additional information becomes available in this regard, you will be promptly advised in the usual manner.

Fraternally yours,

Fred A Hardin
President

Enclosure

cc: International Officers

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

UNITED TRANSPORTATION UNION
AND
NATIONAL CARRIERS' CONFERENCE COMMITTEE

QUESTIONS AT ISSUE:

1. Does Article XIII, Section 3 (1) of the October 31, 1985 Agreement allow the Carriers the right to hire or transfer enginemen from one railroad to another railroad under the umbrella of the parent corporation, even though the railroads are operating under separate names and/or System Schedule Agreements?

2. Did Article XIII, Section 1 (6) and (7) and Section 3 (3) of the October 31, 1985 Agreement change existing assignment rules for filling engineer vacancies for engineers establishing seniority after November 1, 1985?

3. Do the provisions of Article XIII of the October 31, 1985 Agreement permit the Southern Pacific and Denver and Rio Grande Railroads to transfer "Must-Fill" Helper service to another craft (trainmen) instead of using post November 1, 1985 engine service employees to fill such positions when engine service agreements on the property require firemen to fill these positions?

4. May the Union Pacific Railroad require an employee, who has established seniority as a fireman prior to October 31, 1985, and who cannot work as an engineer, to displace either a switchman/trainman holding engine service seniority after October 31, 1985, working as a hostler or a switchman/trainman working as a hostler rather than allow the employee to work as a fireman?

5. Does Article XIII, Section 1 (10) (c) of the October 31, 1985 Agreement permit the Carriers to force assign yardmen and/or brakemen to a hostler extra board that protects temporary hostler vacancies?

6. Does Article XIII, Section 1 (10) (c) of the October 31, 1985 Agreement permit the Carriers to force assign yardmen and/or brakemen to a hostler extra board that protects hostler vacancies?

7. Can the Chicago and North Western Transportation Company discontinue existing hostler and hostler helper positions in violation of pre-existing Agreements for eliminating hostler and hostler helper positions and thus restrict hostlers with a seniority date prior to November 1, 1985 to the remaining assignments, extra list positions or furlough status?

8. Does Article XIII, Section 1 (9) of the October 31, 1985 Agreement prohibit the Carrier from removing firemen with a seniority date prior to November 1, 1985 from passenger firemen assignments and then forcing these firemen to hostler positions?

FINDINGS:

The questions at issue in each of the above disputes are, on their face, unique to the individual properties and subject, in part, to diverse local agreements. Therefore, it is this Committee's finding that these disputes should be promptly submitted to local boards of adjustment for adjudication.

While there may be some overlay of the provisions of the October 31, 1985 National Agreement concerning the application of a local agreement, and while it may be necessary in resolving a particular question at issue to draw upon the Findings and Awards of this Arbitration Committee, we find that the best interests of all the parties would be served by having each of the above disputes resolved through expedited arbitration at the local level. In this respect, studied consideration could then be given to the ramifications of all local rules and practices as they may impact on each separate dispute.

Thus, it is the finding of this Arbitration Committee that the parties to each of the above disputes should meet within twenty (20) calendar days of the date of this Committee's award for the purpose of jointly selecting an arbitrator, and, in the absence of agreement on such matter within this prescribed period of time, requesting the National Mediation Board to appoint an arbitrator for the purpose of hearing the local dispute at issue. The arbitrator so selected must be in agreement to hear the dispute within thirty (30) calendar days and to render findings and an award within thirty (30) calendar days after close of hearings on the dispute.

AWARD:

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

Richard R. Kasher
Richard R. Kasher, Arbitrator

Robert E. Peterson
Robert E. Peterson, Arbitrator

Washington, DC
May 1, 1989

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:

"To what extent does Article XIII eliminate the fireman (helper) craft or class?"

FINDINGS:

The National Mediation Agreement of October 31, 1985 establishes that the craft or class of firemen (helpers) shall be eliminated through attrition, and that trainmen will be the source of supply, to the extent needed, for engineers, designated firemen, and full-time hostler or hostler helper positions.

Article XIII of the October 31, 1985 Agreement essentially adopts and implements the recommendations of Presidential Emergency Board No. 208, wherein it was stated as follows:

> "It is this Board's conclusion that locomotive firemen should be eliminated without further delay subject to attrition and, where appropriate, other protective benefits. .... The time has long past for further delays and deliberations regarding the elimination of firemen and we are not persuaded that it is in the interest of the employees and the railroads to refer the question to arbitration.
>
> If a contrary conclusion were reached, the railroads would continue to be saddled with heavy unnecessary costs and their competitive position, as well as the availability of well-paying jobs, would materially suffer. The retention of firemen is not compatible with a modern efficient railroad system.
>
> In view of the above facts and findings, this Board recommends the following:
>
> B. RECOMMENDATIONS
>
> 1. The fireman/hostler issue be resolved by the elimination of firemen on an attrition basis, recognition of train service employees as the basis source of supply for new engine service employees, establishment of a

voluntary reserve fireman program for employees currently working as firemen or hostlers, elimination of hostler positions where such work can be performed by mechanical forces in conjunction with their current assignments, and the establishing of train service seniority for current firemen and hostlers who presently hold no such seniority.

We recognize that the above recommendation is general in nature. However, in our view, the parties have considerable expertise in negotiating important details of the type or arrangement recommended. Therefore, we leave that task to them.

The recommended protection should convince the affected employees that their future is assured."

The National Agreement provides the manner in which employees will be eligible for the benefits of attrition protection. The protective provisions do not, however, continue or perpetuate the craft or class of firemen (helpers), hostlers and hostler helpers. The myriad amendments to past manning and training agreements, in the light of the meaning and intent of the National Agreement, should only be read for the purpose of establishing the manner in which employees, hired prior to November 1, 1985, are subject to certain protective benefits until, among other events, "they retire, resign, are discharged for cause, or are otherwise severed by natural attrition," as provided for in the National Agreement.

If, after satisfying the protective requirements of Section 1, subsections (10)(a) and (b), of Article XIII, it is determined that operating efficiencies will permit hostling work to be absorbed into the regular work assignments of other employees, then a carrier may have employees other than employees covered by the October 21, 1985 National Agreement perform work heretofore commonly recognized as hostling work. However, if a full-time position continues to exist, or a full-time position is established, either by bulletin or in fact, then this full-time position must be filled by a UTU-represented employee.

The National Agreement does not define the term, "full-time position." In this Arbitration Committee's opinion, full-time hostling work may be determined in the same manner as full-time work would be established in any other craft position; and through a time study exercise where needed. For example, if employees on regular eight-hour assignments in a mechanical department shop perform seven or less hours of actual labor, taking into in consideration offsets for check-in, check-out, washup, meal, or other recognized periods of non-work time, and there is a like aggregate of seven or less hours of hostling work to be performed, then a UTU-represented employee should be used for this hostling work.

In this same connection it must be recognized that it was not intended that extra lists for firemen (helpers) or hostlers and

hostler helpers be perpetuated when the work of such positions can be performed by train service employees as concerns work on full-time positions. In other words, fireman (helper) and hostler positions may be blanked once a carrier has fully complied with the requirements of Section 1, subsections (10)(a) and (b) of the National Agreement.

Accordingly, in keeping with both the meaning and intent of the National Agreement and the recommendations of Emergency Board No. 208, there are no restrictions concerning the amount of incidental hostling work that may be absorbed into the regular work assignments of other than UTU-represented employees. The benchmark separation or key determinant is that if a full-time position exists for the performance of hostling work, then that full-time position belongs to UTU-represented employees. Conversely, hostling work not assigned to a full-time position may be performed by other than UTU represented employees, if there is no subterfuge or attempt to "hide" full-time hostling work within the ranks of non-UTU represented employees.

The Joint Interpretation Committee in a prior award, involving the performance of incidental hostling work by other than UTU represented employees, cited certain time periods only for the purpose of showing what might constitute work of an incidental nature. The Committee did not intend to imply that any specific period of time would constitute the parameters of incidental work. As indicated above, the National Agreement establishes the applicable benchmark measurement; that is, work that is less than that which would constitute establishment of a full-time position.

Application or interpretation of Article XIII in a manner that would obstruct or prolong the attrition process and perpetuate the craft or class of firemen (helpers), hostlers and hostler helpers, would be contrary to the spirit, letter and intent of the National Agreement and would be inconsistent with the recommendations of Presidential Emergency Board No. 208.

AWARD:

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

Richard R. Kasher
Richard R. Kasher, Arbitrator

Robert E. Peterson
Robert E. Peterson, Arbitrator

Washington, DC
May 1, 1989

FRED A. HARDIN
International President

G. THOMAS DuBOSE
Assistant President

THOMAS J. McGUIRE
General Secretary and Treasurer

united transportation union

14600 DETROIT AVENUE
CLEVELAND, OHIO 44107-4250
PHONE: 216-228-9400

(SM)

October 6, 1989

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

LETTER NO. WR-16-84
Supplement #3

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

Dear Chairpersons:

On May 12, 1989, you were furnished copy of Awards involving Article XIII of the 1985 National Agreement and were advised that inasmuch as the intent of the Arbitrators' Award pertaining to the issue of incidental hostler and hostler helper work was extremely confusing, we were requesting a meeting so that the Award could be thoroughly understood by all concerned.

That meeting was held on July 24, 1989, and there was considerable discussion relative to the Carriers' elimination of hostler and hostler helper assignments and their work being performed by shop craft employees.

We have recently received the report from the Arbitrators as a result of that meeting, wherein they concluded that they now lack the authority to establish a benchmark criteria as to what constitutes incidental hostling service, notwithstanding their March 20, 1987, Award which established a "five-minute benchmark."

As it will now be necessary to progress the many outstanding claims to Public Law Boards in order to resolve the disputes, we are enclosing copy of the March 20, 1987, Award; the May 1, 1989, Award; the September 15, 1989, Kasher-Peterson letter; and my letter of September 21, 1989, to Kasher-Peterson. You will note that the Joint Interpretation Committee has now completed its function and will not handle any additional disputes.

It is now clear that in order to resolve disputes arising out of the application of the 1985 National Agreement, it will be necessary to submit claims to Public Law Boards on the individual properties. However, in order that we do not have a dozen identical disputes pending decision simultaneously on a dozen different railroads, we ask that you notify this office, in writing, prior to the presentation of any claims to a Public Law Board. In this way, we can coordinate with the General Committees in an effort to determine which case, based upon the facts and evidence of record, has the most merit and can, therefore, establish a positive precedent. This will also allow for a uniform position with respect to the interpretation of agreement provisions. Additionally, we suggest that you request the assignment of an International Officer to assist in the handling at the Board, if such request for assistance has not previously been made.

Fraternally yours,

Fred A Hardin
President

Enclosure

FRED A. HARDIN
International President

G. THOMAS DuBOSE
Assistant President

THOMAS J. McGUIRE
General Secretary and Treasurer

united transportation union

14600 DETROIT AVENUE
CLEVELAND, OHIO 44107-4250
PHONE: 216-228-9400

September 21, 1989

Mr. Richard R. Kasher
609 Pembroke Road
Bryn Mawr, PA 19010

Mr. Robert E. Peterson
15 Meadow Place
Briarcliff Manor, NY 10510

Gentlemen:

This will acknowledge receipt of your letter concerning a meeting held in Boston on July 24, 1989. You describe the meeting as one which "...the UTU characterizes as an 'Executive and Clarification Session.'" You describe the subjects that we freely discussed in Boston and advise that you do not have the authority to establish a "benchmark" as to what determines incidental hostler service. You also advise you do not have the authority (that you exercised in the May 1 awards) to require expedient resolution of the claims and disputes at the carrier level. You also offer "Men are never so likely to settle a question rightly as when they discuss it freely."

I feel constrained to make a few points in reviewing your report or whatever it is.

First of all, there was no misunderstanding whatsoever that in your original awards dated March 20, 1987 you established a benchmark defining incidental hostling service. There is no question whatsoever that the sessions resulting in the May 1, 1989 awards were recognized as Executive Clarification Sessions. We certainly thought that the Boston meetings should be described the same inasmuch as it was freely admitted by you that the benchmark or criteria contained in your May 1 awards were completely confusing and impossible for us to understand. That was the reason that we so freely discussed all of the problems during the Boston session.

To be absolutely candid, when Mr. Hopkins wrote you (August 3, 1989) after the Boston sessions, advising that he saw no need for clarification and that your May 1 awards settled the issues (ostensibly to his satisfaction), we became disturbed as to the potential results of the Boston clarification. Our fears have now been confirmed. Although you effectively changed your original "five-minute benchmark" in your May 1 awards to something we still do not understand, you now decide you have no authority to establish a benchmark criteria as to what is incidental hostling service. You now advise you have no authority to require expedient resolution of the disputes on the individual carriers.

We will, of course, abide by your final decision and attempt to resolve the issues in whatever forums are available to us. So far most of the carriers are refusing to handle, much less expedite, the resolution of the disputes.

Thank you for serving on this committee and enclosed is a check covering the final bill which you attached to your report, or whatever it is.

Sincerely yours,

Fred A. Harden

President

Enclosure

Richard R. Kasher
609 Pembroke Road
Bryn Mawr, PA 19010
(215) 525-0167

Robert E. Peterson
15 Meadow Place
Briarcliff Manor, NY 10510
(914) 941-0131

September 15, 1989

Mr. Charles I. Hopkins, Jr.
Chairman
National Railway Labor Conference
1901 L Street, NW
Washington, DC 20036

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

Re: Joint Interpretation Committee
October 31, 1985 Agreement

Gentlemen:

This has reference to the meeting we held in Boston, Massachusetts on July 24, 1989 at the request of the United Transportation Union (UTU), a meeting the UTU characterizes as an "Executive and Clarification Session", and the subsequent exchange of correspondence concerning that meeting, which focused upon a number of issues regarding the proper assignment of hostler service on the nation's railroads pursuant to the provisions of the October 31, 1985 National Agreement.

We have considered the opinions and statements of position you expressed at the Boston meeting. Additionally, we have reviewed the July 26, 1989 letter from Mr. Hardin regarding our awards rendered on March 20, 1987 and May 1, 1989, the July 31, 1989 telegram from Messrs. Hardin and Thompson regarding hostler positions on the CSX at Erwin, Tennessee, the August 3, 1989 letter from Mr. Hopkins regarding the Boston meeting and stating the Carriers' position regarding "full time" hostling, Mr. Hardin's August 4, 1989 letter and attachments regarding the Boston meeting and addressing the discontinuance of twenty-eight (28) hostler positions at Waycross, Georgia and other hostler positions at Erwin, Tennessee, to which he attached a comparison of the arguments raised by the NRLC in different submissions presented to the Joint Interpretation Committee, and Mr. Hopkins' letter dated August 22, 1989 in response to our letter of August 14, 1989, in which we invited final comments from the parties regarding the issues raised at the July 24, 1989 Boston meeting.

In our opinion, the July 24, 1989 Boston meeting and the subsequent correspondence raise four (4) "issues". First, is our award of May 1, 1989 concerning assignment of "incidental hostling work by other than UTU-represented employees" inconsistent with a previous award we rendered on March 20, 1987? Second, is the Joint Interpretation Committee the proper forum for establishing the benchmark as to what constitutes "full time" hostling work? Third, are the alleged actions taken by several named Carriers whereby substantial hostling work has been removed from full time UTU-represented hostlers and assigned to mechanical department employees violative of our previous awards concerning this subject matter? Fourth, should the Joint Interpretation Committee exercise jurisdiction and render awards and/or opinions regarding certain alleged instances of violation brought to our attention in the UTU correspondence referred to above?

Insofar as the first issue is concerned, the UTU has, on several occasions, directly stated or implied that this Committee "changed horses in mid-stream" when we rendered our award on May 1, 1989 concerning the extent to which the Carriers may use other than employees represented by the UTU to make hostling moves. In our first award we said five minutes of work represented work of "an incidental nature". We chose this unit of time because it was an example of incidental work referred to in the Carriers' submission, and not because it represented a universal time limit. In our May 1, 1989 award, which concerned a dispute as to the extent Article XIII provided for the elimination of the fireman (helper) craft or class, our findings addressed how incidental hostling work, established by the 1985 National Agreement, constituted work that did not require the establishment of a "full time" position. Our award of May 1, 1989 did not change the essence of the first award; it merely elaborated upon the manner in which the 1985 National Agreement had provided for the performance of incidental work by other than UTU-represented employees. In retrospect, this Committee would have been better advised not to have used the "five minute" example in our first award, since it was, apparently, viewed by the UTU as establishing an outside time limit or parameter on the assignment of hostling work to non-UTU-represented employees. That was not our intent.

The second issue we have identified was a major topic of discussion during the July 24, 1989 Boston meeting represents the UTU's justifiable concern that absent a clear "benchmark" as to what constitutes a "full time" hostling position, Carriers may abuse the underlying spirit and intent of the October 31, 1985 National Agreement. This Committee is sympathetic to the Organization's concerns. The UTU points out that in 1964 it entered a national agreement providing for the elimination of "last yard engine assignments on a shift", and that the benchmark or criteria for the

abolishment was that if the yard engine assignment did not perform four and one half (4 1/2) hours or more work during an eight (8) hour tour of duty then the assignment could be eliminated. The UTU further points out that such benchmark has been both practicable and efficient for some twenty-five years, "and that is the type benchmark we must have in the moving engine provisions of the agreement [1985]". This proposal by the UTU, in many respects, appears to be equitable as it would permit the Carriers the unchallenged right to have other than UTU-represented employees perform up to four and one half (4 1/2) hours of hostling work; and it would appear, based upon down time in a shop facility involving meals, wash-up and checking in or out, that such a benchmark would likely cover most, if not all, incidental hostling work on many work shifts. However reasonable and equitable the UTU's proposal might be, nevertheless this Committee is not in a position to "establish" such a benchmark in view of the fact that our jurisdiction is limited to "interpretation" of the October 31, 1985 National Agreement or to "clarifying" any of our findings and awards issued under that Agreement. The 1985 National Agreement contains no provisions regarding the establishment of defined time limits or benchmarks used for measurement purposes when a hostling position is to be abolished. This Joint Interpretation Committee finds no jurisdiction to extend its authority to impose an amended or modified greement which would contain a benchmark such as the one the UTU uggests. In 1964 the UTU and the Carriers agreed upon the "last yard engine assignment" benchmark. It would be appropriate for the parties to resolve the instant dispute through the process of collective bargaining. In that forum the parties might consider modifying certain provisions or requirements of the 1985 National Agreement. You could address certain of the issues raised before this Committee, such as the possible separation of responsibilities for "inside" as opposed to "outside" the shop hostling services, and you could define the extent to which train service employees may or may not be forced from higher paying assignments to cover a lesser paying full-time hostler position.

The third issue raised for our consideration concerns a number of allegations regarding how certain carriers are violating the National Agreement by the manner in which they are abolishing UTU-represented hostler positions and assigning that work to other than UTU-represented employees. In certain of our previous awards we made reference to the fact that the abolishment of hostler positions was not to be effected by "subterfuge". Obviously, this Committee is not in a position to identify where subterfuge or "sharp practices" may exist, since, as noted above, our jurisdiction is limited to issues regarding interpretation of the National Agreement. If, in fact, certain Carriers are engaging in subterfuge and violating the spirit and intent of the National Agreement and our findings, then those cases should be progressed to arbitration and appropriate monetary remedies and estoration of hostling positions should be sought.

Finally, a fourth issue concerns the UTU's "submission" to this Joint Interpretation Committee of a number of disputes it has with individual carriers regarding the manner in which hostling positions have been abolished and hostler and hostler helpers have been furloughed. In our May 1, 1989 award, addressing eight (8) separate disputes raised by the UTU, we concluded that the disputes involving individual properties, where there was the probable "overlay" of the provisions of the October 31, 1985 National Agreement on local agreements, were properly submitted to expedited arbitration. This Committee is not unmindful of the UTU's claim that their request to the Joint Interpretation Committee to take jurisdiction in these matters is due to the fact that many of their individual or local complaints have received no consideration from certain individual Carriers. This Committee found that expedited procedures for arbitration should be established for the resolution of these and other local disputes. Unfortunately, we have no method to enforce the procedures contained in our award, if individual carriers fail to act in good faith and cooperate in resolving certain long-standing disputes through agreement or arbitration. If the expedited arbitration time limits we found to be appropriate have proven to be too restrictive for the purpose of jointly selecting arbitrators under the financial constraints of funding provided by the National Mediation Board, then the parties have the right to mutually extend the time periods set forth in our award.

As concluding observations, this Committee notes that while certain local UTU committee and Carrier managements have engendered a number of disputes, there is, on the other hand, an absence of disputes on several other Carrier properties, and we have been advised that on a number of these properties the parties have amicably resolved the question of the abolishment of hostler positions, the protection of covered employees and the absorption of incidental work by employees other than those who are represented by the UTU. It has been said that "Men are never so likely to settle a question rightly as when they discuss it freely". It is this Committee's hope that the parties, particularly Carrier managements and UTU officers at the local level, will exhibit that same spirit of cooperation and resolve that brought about the 1985 National Agreement and its many interrelated benefits for both the Carriers and their employees represented by the UTU.

Based upon the above, this Committe finds that its jurisdiction has ended insofar as its interpretative function is concerned. We thoroughly enjoyed the opportunity of working with you both and your colleagues. Enclosed are our final bills for our services.

Sincerely,

Richard R. Kasher

Richard R. Kasher

Robert E. Peterson

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:

"To what extent does Article XIII eliminate the fireman (helper) craft or class?"

FINDINGS:

The National Mediation Agreement of October 31, 1985 establishes that the craft or class of firemen (helpers) shall be eliminated through attrition, and that trainmen will be the source of supply, to the extent needed, for engineers, designated firemen, and full-time hostler or hostler helper positions.

Article XIII of the October 31, 1985 Agreement essentially adopts and implements the recommendations of Presidential Emergency Board No. 208, wherein it was stated as follows:

> "It is this Board's conclusion that locomotive firemen should be eliminated without further delay subject to attrition and, where appropriate, other protective benefits. .... The time has long past for further delays and deliberations regarding the elimination of firemen and we are not persuaded that it is in the interest of the employees and the railroads to refer the question to arbitration.
>
> If a contrary conclusion were reached, the railroads would continue to be saddled with heavy unnecessary costs and their competitive position, as well as the availability of well-paying jobs, would materially suffer. The retention of firemen is not compatible with a modern efficient railroad system.
>
> In view of the above facts and findings, this Board recommends the following:
>
> B. RECOMMENDATIONS
>
> 1. The fireman/hostler issue be resolved by the elimination of firemen on an attrition basis, recognition of train service employees as the basis source of supply for new engine service employees, establishment of a

voluntary reserve fireman program for employees currently working as firemen or hostlers, elimination of hostler positions where such work can be performed by mechanical forces in conjunction with their current assignments, and the establishing of train service seniority for current firemen and hostlers who presently hold no such seniority.

We recognize that the above recommendation is general in nature. However, in our view, the parties have considerable expertise in negotiating important details of the type or arrangement recommended. Therefore, we leave that task to them.

The recommended protection should convince the affected employees that their future is assured."

The National Agreement provides the manner in which employees will be eligible for the benefits of attrition protection. The protective provisions do not, however, continue or perpetuate the craft or class of firemen (helpers), hostlers and hostler helpers. The myriad amendments to past manning and training agreements, in the light of the meaning and intent of the National Agreement, should only be read for the purpose of establishing the manner in which employees, hired prior to November 1, 1985, are subject to certain protective benefits until, among other events, "they retire, resign, are discharged for cause, or are otherwise severed by natural attrition," as provided for in the National Agreement.

If, after satisfying the protective requirements of Section 1, subsections (10)(a) and (b), of Article XIII, it is determined that operating efficiencies will permit hostling work to be absorbed into the regular work assignments of other employees, then a carrier may have employees other than employees covered by the October 21, 1985 National Agreement perform work heretofore commonly recognized as hostling work. However, if a full-time position continues to exist, or a full-time position is established, either by bulletin or in fact, then this full-time position must be filled by a UTU-represented employee.

The National Agreement does not define the term, "full-time position." In this Arbitration Committee's opinion, full-time hostling work may be determined in the same manner as full-time work would be established in any other craft position; and through a time study exercise where needed. For example, if employees on regular eight-hour assignments in a mechanical department shop perform seven or less hours of actual labor, taking into in consideration offsets for check-in, check-out, washup, meal, or other recognized periods of non-work time, and there is a like aggregate of seven or less hours of hostling work to be performed, then a UTU-represented employee should be used for this hostling work.

In this same connection it must be recognized that it was not intended that extra lists for firemen (helpers) or hostlers and

hostler helpers be perpetuated when the work of such positions can be performed by train service employees as concerns work on full-time positions. In other words, fireman (helper) and hostler positions may be blanked once a carrier has fully complied with the requirements of Section 1, subsections (10)(a) and (b) of the National Agreement.

Accordingly, in keeping with both the meaning and intent of the National Agreement and the recommendations of Emergency Board No. 208, there are no restrictions concerning the amount of incidental hostling work that may be absorbed into the regular work assignments of other than UTU-represented employees. The benchmark separation or key determinant is that if a full-time position exists for the performance of hostling work, then that full-time position belongs to UTU-represented employees. Conversely, hostling work not assigned to a full-time position may be performed by other than UTU represented employees, if there is no subterfuge or attempt to "hide" full-time hostling work within the ranks of non-UTU represented employees.

The Joint Interpretation Committee in a prior award, involving the performance of incidental hostling work by other than UTU represented employees, cited certain time periods only for the purpose of showing what might constitute work of an incidental nature. The Committee did not intend to imply that any specific period of time would constitute the parameters of incidental work. As indicated above, the National Agreement establishes the applicable benchmark measurement; that is, work that is less than that which would constitute establishment of a full-time position.

Application or interpretation of Article XIII in a manner that would obstruct or prolong the attrition process and perpetuate the craft or class of firemen (helpers), hostlers and hostler helpers, would be contrary to the spirit, letter and intent of the National Agreement and would be inconsistent with the recommendations of Presidential Emergency Board No. 208.

AWARD:

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

Richard R. Kasher
Richard R. Kasher, Arbitrator

Robert E. Peterson
Robert E. Peterson, Arbitrator

Washington, DC
May 1, 1989

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
Richard R. Kasher, Arbitrator

Robert E. Peterson
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
Richard R. Kasher, Arbitrator

Robert E. Peterson
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 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