INDEX - DIGEST
OF
SIDE LETTERS,
AGREED-UPON
QUESTIONS AND ANSWERS,
AND
ARBITRATION AWARDS
CONCERNING THE
AUGUST 25, 1978
NATIONAL AGREEMENT
Between

UNITED TRANSPORTATION UNION
and
NATIONAL CARRIERS' CONFERENCE COMMITTEE

INDEX-DIGEST OF AGREED-UPON QUESTIONS AND ANSWERS SIDE LETTERS AND ARBITRATION AWARDS CONCERNING THE AUGUST 25,1978 UTU NATIONAL AGREEMENT

ARTICLE X1 - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE II - BEREAVEMENT LEAVE

ARTICLE XIII - OFF-TRACK VEHICLE ACCIDENT BENEFITS

ARTICLE I - GENERAL WAGE INCREASES

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

Side Letter

In accordance with our understanding, this is to confirm that the carriers will make all reasonable efforts to make the retroactive increase payments provided for in the Agreement signed today as soon as possible.

If a carrier finds it impossible to make the retroactivity payments with sixty days, it is understood that such carrier will notify you in writing as to why such payments have not been made and indicate when it will be possible to make such retroactive payments.

1-1.1

ARTICLE IV - HEALTH AND WELFARE BENEFITS; EARLY RETIREMENT MAJOR MEDICAL EXPENSE BENEFITS; AND DENTAL BENEFITS

PART B - Early Retirement Major Medical Expense Benefit
Section 1 - Employees Eligible -General

Q-1: Due to lack of information being provided, some eligible employees have been required to temporarily enroll in GA-23111 until at such time as his eligibility is determined or certified. Under these conditions, is the employee or the carrier required to pay the premium for coverage under GA-231112?

A-1 Steps have been taken to minimize any occasion for this in the future. Any one enrolling under GA-23111 does so at his own expense - but see answer to 2.

Q-2: Will an employee retired from service, fully qualified for the Early Retirement plan, who may have enrolled under Travelers GA-23111 and who may have had a claim under such policy, be reimbursed for premium paid under GA-23111 and have his claim payment readjusted?

A-2: It is understood that Travelers has extended assurance to individual employees and retired employees who have inquired as to their status that if they arrange for coverage under Group Policy GA-23111 and turn out to be covered by the Early Retirement Major Medical Benefit Plan, their premiums under GA-231 11 will be refunded to them; that the premium refunds would be made from funds in connection with GA-23111 and not from funds under the Early Retirement Major Medical Benefit Plan; and if claims should have been incurred, appropriate "corrective - measures will be taken so that the claims will be recomputed under and charged to GA-46000 and GA-23111 will be relieved thereof.

Q-3: Under the circumstances cited in Question 1, what would be the status of an employee who did not, for reasons beyond his control, enroll in GA-23111 for the interim period?

A-3: His failure to enroll under GA-23111 will not affect his eligibility for coverage under the Early Retirement Major Medical Benefit Plan or his benefits under that Plan.

Q-4: Under Question 3, if the employee is required to pay the premium will he or she be reimbursed once eligibility has been certified? If so, by whom?

A-4: See answer to Question 2.

PART B - Early Retirement Major Medical Expense Benefit
Section 1 - Employees Eligible - General

Q-5: Under the conditions cited in Question 3, what would be the status of the employee where it is later determined he is not eligible for coverage under GA46000?

A-5: He is without coverage - during the entire period since his GA-23000 coverage ceased.

ARTICLE IV - HEALTH AND WELFARE BENEFITS, EARLY RETIREMENT MAJOR MEDICAL EXPENSE BENEFITS; AND DENTAL BENEFITS

PART B - Early Retirement Major Medical Expense Benefit
Section 1 a. (i) - Employees Eligible - Age

Q-1: As I understand, the agreement, among other things, provides that an early retiree must be 61 years of age on or after July 1, 1978 in order to qualify for benefits. If the man retires at age 60, no disability being involved, and is qualified in every other way, can he pick up his benefits when he attains age 61?

A-1: No.

Q-2: What is the scope of the term "was covered for employee or dependent health benefits under the Railroad Employees National Health and Welfare Plan"?

A-2: It means - an employee who was covered by GA-23000 as an employee in active service, (i) e., who had last worked or received vacation pay in a covered capacity not earlier than the preceding month and had since retired and not otherwise severed his employment relationship; he could have been an employee of a non-hospital association railroad in which case he would have been covered for employee and dependent health benefits, or an employee of a hospital association railroad in which case he would have been covered for only dependent health benefits.

Q-3: What is the purpose of requirement that employee or dependent must have had prior coverage under the Railroad Employees National Health and Welfare Plan?

A-3: 1. To provide coverage to the same employees as the Health and Welfare Plan covers,

2. To assure that only current active railroad employees are covered, and

3. To avoid a gap in coverage as between the Health and Welfare Plan and the Early Retirement Major Medical Benefit Plan.

Q-4: Is provision made for employees of railroads not party to the Railroad Employees National Health and Welfare Plan to participate (on a craft basis or other delineated group) in the early retirement health program?

A-4: No.

PART B - Early Retirement Major Medical Expense Benefit
Section 1 a. (i) - Employees Eligible - Age

Q-5: Would an employee over age 61 and covered under GA-23000 with 29-1/2 years of service (354 months) and thereby eligible for a retirement annuity under the 60/30 provisions of the Railroad Retirement Act, be considered eligible for the retiree health coverage?

A-5: Yes, if he fulfills other coverage requirements (applies for Railroad Retirement annuity after July 1, 1978, and has a current connection and is covered by GA-23000 the day before such application). However, his benefits will not become effective before August 1, 1978.

IV-B-1(a)(i).2

ARTICLE IV - HEALTH AND WELFARE BENEFITS; EARLY RETIREMENT MAJOR MEDICAL EXPENSE BENEFITS; AND DENTAL BENEFITS

PART B - Early Retirement Major Medical Expense Benefit
Section 1 a. (ii) - Employees Eligible - Disability

Q-1: If an employee is awarded a disability annuity at age 59 and qualifies in every other way (30 years actual service plus post-service disability, current connection, etc.), is he covered when he attains 61 years of age?

A-1: Yes, provided he

(1) was disabled as of his annuity date, and has continued to be disabled thereafter,

(2) had a current connection with the railroad industry when he became disabled,

(3) was covered, at least for employee major medical expense benefits, under GA

23000 (or would have been so covered if he had been an employee of a non hospital association railroad) until the later of

(a) August 1, 1978, or

(b) the date he attained 61 years of age.

Q-2: Is it contemplated an employee under the major medical coverage only of the extended benefits provisions of GA-23000 (and meeting age and service requirements) is considered as eligible for the retiree coverage?

A-2: Yes.

PART B - Early Retirement Major Medical Expense Benefit
Section I a. (ii) - Employees Eligible - Disability

Q-3: Is an employee eligible for coverage under GA46000 under the following set of circumstances:

1) Was 61 years of age and had 30 years of service prior to July 1, 1978;
2) Had exhausted R.U.I.A. sickness benefits prior to July 1, 1978;
3) Was receiving a disability annuity on July 1, 1978;
4) Had a current connection with the railroad industry on the date immediately prior to date on which he began receiving a disability annuity;
5) On August 1, 1978 was receiving employee health benefits or was still eligible for such benefits under the disability waiver provisions, under the Railroad Employees National Health and Welfare Plan;
6) Retired on or after August 1, 1978 under the 60/30 provisions of the Railroad Retirement Act of 1974?

A-3: Yes.

ARTICLE IV - HEALTH AND WELFARE BENEFITS; EARLY RETIREMENT MAJOR MEDICAL EXPENSE BENEFITS, AND DENTAL BENEFITS

PART B - Early Retirement Major Medical Expense Benefit
Section 1 b. - Dependents Eligible

Q-1: In either of the cases cited in the Question No. I under Section 1.a.(i) - Age Retirements or Question No. 1 under Section 1.a.(ii) - Disability Retirements, does a dependent receive any coverage?

A-1: A dependent may be covered only if retired employee upon whom the dependent is dependent is eligible for coverage.

Q-2: In the case of an employee under the major medical extended coverage as in Question No. 2 under Section 1.a.(ii) - Disability Retirements, who becomes age 61 while so covered and whose spouse's coverage under GA-23000 had ceased, will his spouse become eligible as a dependent when he becomes eligible?

A-2-- The employee becomes eligible at age 61 (but not before August 1, 1978) if he then meets all other requirements, and his spouse becomes covered in the situation outlined at the same time. The employee himself will not be covered until his own GA-23000 coverage ceases.

PART B - Early Retirement Major Medical Expense Benefit
Section 1 d. - Duration of Coverage

Q-1: Will provisions be made that when coverage under this plan terminates for the employee, or dependents, they will be eligible to enroll for coverage under Travelers Policy Contract GA-231112?

A-1: It is understood that the labor organizations, which are the sole policyholders of Group Policy GA-231112? plan to arrange for eligibility for coverage under that group policy on the basis of immediately prior coverage under Group Policy GA-46000.

Q-2: Should this paragraph be interpreted as though it included the additional words "or become disabled":

If the employee predeceases dependent(s), or becomes eligible for Medicare by reason of disability, the date the employee would have become eligible for Medicare by reason of age if he had not died or become disabled.

A-2: Yes.

IV-B-1(d).1

ARTICLE IV - HEALTH AND WELFARE BENEFITS, EARLY RETIREMENT MAJOR MEDICAL EXPENSE BENEFITS; AND DENTAL BENEFITS

PART B - Early Retirement Major Medical Expense Benefit
Section 1 d. - Duration of Coverage

Q-3: Under what conditions will coverage for a non-disabled spouse of a deceased employee cease?

A-3: Coverage for the spouse of a deceased employee will cease on the earliest of any of the following dates:

(1) The date the deceased employee would have become eligible for Medicare by reason of age* if he had lived.

(2) The date the spouse becomes eligible for full Medicare coverage due to age* or due to disability.

(3) The date the spouse ceases to be a dependent of the retired employee, as defined in Group Policy GA-46000. -

(4) The date the spouse remarries.

(5) The date the spouse dies.

* Or would be eligible for Medicare, except for reasons of residence or citizenship.

** Same definitions of "dependent" as in Group Policy Contract GA-23000.

ARTICLE IV - HEALTH AND WELFARE BENEFITS, EARLY RETIREMENT MAJOR MEDICAL EXPENSE BENEFIT& AND DENTAL BENEFITS

PART B - Early Retirement Major Medical Expense Benefit Section 1 e. - Plan Benefits

Q-1: On the date a retired employee attains 65 years of age and his coverage and that of his dependents terminates, his wife (age 63) is subject to a temporarily disabling condition. Will her benefits be cut off as of the date of termination of coverage?

A-1: No. Provision will be made for extension of benefits in relation to that condition only, after coverage ceases, in such cases while the dependent continues disabled, but not beyond the end of the next calendar year after coverage ceased.

IV-B-1(e).1

PART B - Early Retirement Major Medical Expense Benefit Section 2 - Administration

Q-1: What procedure is to be followed by an employee to obtain certification of his eligibility and when?

A-1: A procedure will be established, including necessary forms, for informing an employee before retirement as to eligibility. Any claims should be filed with the nearest Travelers claim office.

Q-2: What arrangements have been made by individual railroads for determining employee eligibility?

A-2: See Answer to Question 1 above.

Q-3: Will the employee be notified as to the type and scope of coverage? If so, when and how?

A-3: See Answers to Questions 1 above and 4 below.

Q-4: How are certifications as to eligibility, I.D. cards, descriptive booklets, etc., to be handled?

A-4: As soon as the final group policy language is settled, employee information and certification booklets will be prepared and certification forms, identification cards if they are decided upon, and other necessary information will be prepared and distributed. It is understood that in general the material would follow along the same lines as GA23000. Distribution arrangements would necessarily have to be adapted to the retired employee program and geared to those who are and who may be retiring.

Q-5: Must an employee terminate his coverage under GA-23000 and enroll under the retiree plan in order to cover his spouse?

A-5: No enrollment is necessary for either the retired employee or his dependents. Coverage is automatic, if qualifying requirements are met, after GA-23000 coverage runs out.

ARTICLE IV - HEALTH AND WELFARE BENEFITS, EARLY RETIREMENT MAJOR MEDICAL EXPENSE BENEFITS, AND DENTAL BENEFITS

PART B - Early Retirement Major Medical Expense Benefit Section 3 - Employees of Hospital Association Railroads

Q-1: Does the commitment ". . . to provide benefits similar to those provided by the plan . . ." mean without additional cost to the individual employees?

A-1: Yes.

Q-2: The last sentence of this Section states, (1) that where an employee did not belong to the hospital association, or left it after retirement, and the hospital association participates in the national plan, the employee will not now be eligible for coverage; and (2) where an employee who belongs to the hospital association but the hospital association does not participate, the employee may not opt for hospital association coverage.

In (2) above, is it to be understood that an employee belonging to a hospital association may not forego the Early Retirement Plan entirely in order to participate in such plan as the hospital association may now have for retirees at their own expense and will have the ultimate effect of phasing out retiree coverage by such hospital associations?

A-2: An employee of a railroad, which for purposes of the Railroad Employees National Health and Welfare Plan is a hospital association railroad, but on which the hospital association elects not to furnish the commitment referred to in Section 3 of Article IV Part B, will automatically be covered by the Early Retirement Major Medical Benefit Plan on the national basis. He cannot get benefits from the hospital association at railroad cost by declining benefits under the National Plan. If he chooses to purchase at his own expense benefits from the hospital association through payment of dues or otherwise, that is not prohibited by anything in the Early Retirement Major Medical Benefit Plan except as it might be prohibited by something in the hospital association's own arrangements.

Q-3: Will an employee as in (1) above who did not belong to the hospital association and the hospital association does not participate in (2) above, be eligible for the coverage which will be provided through Travelers?

A-3: No, because he neither belonged to a hospital association nor was covered under GA23000.

ARTICLE IV - HEALTH AND WELFARE BENEFITS: EARLY RETIREMENT MAJOR MEDICAL EXPENSE BENEFITS; AND DENTAL BENEFITS

PART C - Dental Benefits Section 2 c. - Extended Coverage

Q-1: Would an employee and dependents covered by virtue of the extended benefits provisions of GA-23000 who would not be covered for dental plan benefits because of there being no extended benefits, become eligible for dental benefits on November 1, 1978?

No. Such benefits are intended to apply to employees who because of disability did not work, or were placed on furlough, or were suspended or dismissed from employment, or who due to pregnancy which commenced while insured under the Dental Plan cease to render service, on or after November 1, 1978 (or such later date as the Dental Plan liberalizations became or become effective for his employee group).

Q-2: Would an employee who last performed service or received vacation pay in October, 1978, and thereby had coverage through November be entitled to the extension of benefits provisions which first became effective November 1, 1978.

A-2: If the employee last performed service or received vacation pay in October 1978 and became disabled, whether in October or November 1978, and solely because of that disability did not work in November, he would be covered. If after having last performed service or received vacation pay in October 1978 he was placed on furlough, or suspended or dismissed from employment, in October, he would not be covered, but if the furlough, suspension or dismissal occurred in November 1978, he would be covered. See Answer to Question 1 above as to pregnancy absences.

Q-3: If extended coverage is to be provided as under the National Health and Welfare Plan, will the employee have coverage during the yearly period as under the major medical only coverage period under the National Health and Welfare Pan, and to what extent of coverage?

A-3: Disability coverage under the National Dental Plan will extend only until the end of the calendar Year following the year in which the disabled employee last worked or received vacation - on pay. The Dental Plan provides nothing to correspond with the major medical expense benefits provisions of the Health and Welfare Plan, and consequently the additional year of extended benefit coverage is not a factor in connection with the Dental Plan.

ARTICLE VII - APPLICATION FOR EMPLOYMENT

ARTICLE VII, Section 1 - Probationary Period

Q-1: Is the carrier required to cite any reason for declination of application for employment?

A-1: No.

AWARDS:

Denied. Carrier terminated the employment of a switchman/trainman, who was hired on May 30, 1994, on July 19, 1994. The Board held such action to be in accordance with Article VII, Section 1. The agreement was not violated and there was no basis for overturning the action of the Carrier.

PLB 964, A-872, UTU v. NS, Ref. John B. Criswell, July 24, 1995

VII-1.1

ARTICLE VIII - EMPLOYMENT OF FIREMEN

ARTICLE VIII - General

Q-1: Are employees, conductors (foremen), brakemen (yardmen-switchmen), hostlers and hostler helpers desiring to transfer to positions of locomotive firemen, limited to such transfer only within their own seniority district?

A-1: Whilee not required by the agreement, such employees may be offered and may elect to accept transfers to firemen positions in other seniority districts.

Q-2: If a conductor (foreman), brakeman (yardman-switchman), hostler or hostler helper transfers to a fireman position in accordance with this Article VIII, may the employee voluntarily elect to forfeit his seniority in engine service and exercise seniority in the craft from which he transferred?

A-2: This national rule does not provide for voluntary forfeiture of rights in engine service.

Q-3: It is our understanding that Article V of the Manning Agreement of July 19, 1972, Transfer of Firem en (Helpers), is restrictive to" . . . operate out of same terminal . . ." How would this apply to a trainman transferring to engine service? Could he transfer to another seniority district or another terminal in his own seniority district?

A-3: Article V of the July 19, 1972 Manning Agreement would not apply until the trainman establishes seniority as a fireman, after which he would be subject to such agreement.

Q-4: Would trainmen working in a Supervisory capacity be allowed to transfer to engine service and cut in ahead of junior train service employees who have transferred to engine service if and when they return to train service?

A-4: No.

Q-5: If a trainman is off because of illness, injury, or leave of absence, would he be allowed to transfer to engine service upon returning to service and be placed ahead of a junior trainman previously transferred?

A-5: This national agreement does not apply in any way to this situation and it does not affect any other agreements which might be applicable in this regard.

VIII-G.1 1

ARTICLE VIII - EMPLOYMENT OF FIREMEN

ARTICLE VIII - General

AWARDS:

Denied. Claimant requested transfer from train service into engine service under the provisions of Article VIII and was promoted to engineer on June 9, 1986. After working as an engineer for less than two years, Claimant attempted to transfer back to train service. Carrier refused such transfer by reason of Article VIII, Section 3, on the basis that he was able to work in engine service. After repeated attempts by Claimant to return to train service were rejected by the Carrier, Claimant submitted Doctor and Dentist statements indicating that his job was causing anxiety, fatigue and excess teeth grinding. Carrier removed Claimant from service until such time as he was medically/psychologically able to return to service. Claimant was released to return to service without limitation by his doctors and filed claim for compensation lost during the seven months he was out of service. The Board held that Carrier had a reasonable basis for withholding Claimant from service and promptly had Claimant examined and returned to service when it received appropriate information that he was able to resume his duties.

1-23989,UTU v. KCS, Ref. John C. Fletcher, April 20, 1990

VIII-G.2

ARTICLE IX - ENTRY RATES

ARTICLE IX, Section 1 - Service First 12-Months

Q-1: Is it the intent of this section of the agreement to pay the established rate to a new fireman and/or hostler who transferred from a craft other than switchman/brakeman after a completion of twelve (12) months' combined service in both crafts?

A-1: No.

Q-2: An employee worked as a switchman for approximately 6 months in 1973, at which time he obtained a leave of absence to assume an official position with the carrier. After approximately five years in this capacity, he returned to service as a switchman, exercising seniority established in 1973. Is he subject to the 90% entry rate for 6 months following his return to service?

A-2: No.

Q-3: An employee worked for 6 months as a brakeman, terminated his seniority and three years later was reemployed with the same Carrier and a new seniority date after the effective date of this Article. Is this employee's rate of pay 90% of the established rates for only 6 months?

A-3: Yes.

Q-4: Is an employee who hired out and performed service as a trainman prior to the effective date of this Article, and subsequently transferred to engine service, entitled to receive the full rate for service performed as a fireman?

A-4: Yes, because he hired out prior to the effective date of this Article.

Q-5: What would be the rate of pay during the first twelve (12) months for a trainman allowed to transfer to the craft of fireman if he already has several years of service as a trainman?

A-5: The established rate for firemen.

IX-1.1

ARTICLE IX - ENTRY RATES

ARTICLE IX, Section 1 - Service First 12-Months

Q-6: In July 1978, the carrier hired five (5) brakemen. They were given physical examinations and placed in student service. Upon completion of this service, and prior to making a pay trip, these individuals were furloughed. These men were called back into train service subsequent to the consummation of the August 25, 1978 Agreement and the carrier is taking the position that these men fall under the auspices of Article IX, Section 1. Is the carrier's position correct, or are these employees entitled to full rates of pay inasmuch as they were actually hired prior to the date of the Agreement?

A-6: If under the seniority rules in effect on the property, seniority was established upon completion of the student trips, these employees would be entitled to the full rates ofpay.

If under the seniority rules in effect on the property, seniority is not established until compensated service is performed and such service was not performed prior to the effective date of this Article, these employees would be subject to the 90% entry rate.

Q-7: Are employees in crafts other than those represented by the UTU, transferring to the fireman craft protected by the combined service provision of Section 1(c)?

A- A-7: No, this rule is applicable only to those employees transferring from crafts represented by the UTU.

Q-8: When does an employee enter service of a carrier?

A-8: An employee enters service as of the date on which seniority is established under applicable local rules.

Q-9: Under paragraph (a) what are the applicable rates of pay when an employee is in a so-called probationary status?

A-9: The probationary period has no effect on the applicable rates of pay.

ARTICLE IX - ENTRY RATES

ARTICLE IX, Section 1 - Service First 12-Months

Q-10: An employee works for six (6) months during which time the employee is compensated for such service at the 90% entry rate. As a result of an on-duty injury, the employee is unable to perform service during the succeeding six (6) month period, but is compensated for all time lost at 90% of the applicable rate of pay. Upon the employees return to active service, may the carrier extend the initial twelve (12) month entry rate period by the period of time the employee was out of service because of the on-duty injury?

A-10: No. An employee's absence under such circumstances would not be considered as 'voluntary". -

Q-11: Where individual railroad agreements provide that crews will be paid for time spent at their away-from-home terminal, is this payment considered an arbitrary and/or special allowance to be paid for at the full rates of pay?

A-11: No.

IX-1.3

ARTICLE IX - ENTRY RATES

ARTICLE IX, Section 2 - Preservation of Lower Rates

Q-1: May the 90% entry rate be applied against an existing lower training rate?

A-1: No.

Q-2: If an existing training rate is lower than the, standard basic rate, but higher than 90% of the basic rate, may the Carrier apply the 90% to the lower existing training rate?

A-2: No. Where there is an existing training rate the rate to be applied is either 90% of the standard basic rate or the existing training rate, whichever is lower.

ARTICLE X - ROAD-YARD MOVEMENTS

ARTICLE X, Section 1 - Amendment of Article IX, Section I of 1972 UTU Nat'l Agreement

Q-1: In what sequence may the additional one straight pick-up at the initial terminal and the additional one straight set-out at the final terminal be made?

A-1: In this respect the application is the same as the former rule. At the initial terminal, after picking up train and commencing outbound trip, the road crew may be required to make one additional straight pick-up at another location within the limits of its initial terminal in connection with its own train. At the final terminal the road crew may be required to make one straight set-out at another location within the limits of the final terminal before the final yarding of its train.

Q-2: Does the term "another location" include another yard track in the yard in which the train is made up or is finally yarded?

A-2: No.

Q-3: Does the term "another location" as used in this Article X refer to any other location within the present yard limits?

A-3: Yes, provided the "location" is in an area where the road crew has seniority Tights to work.

Q-4: Did the language change from "another yard" to "another location" allow the carrier the right to require road crews to make one straight pick up or set out at another location if this requires the crew to operate off-district and on another seniority district?

A-4: No, unless the carrier had the previous tight to require such road crews to set out or pick up at "another yard" located off-district and on another seniority district.

ARTICLE C - ROAD-YARD MOVEMENTS

ARTICLE X, Section 1 - Amendment of Article IX, Section I of 1972 UTU Nat'l Agreement

Q-5: If arbitraries were paid subsequent to the January 27, 1972 Agreement because the location where the pick ups and set outs were made was not "another yard" and the pick ups and set outs are still made in the same spot, are the arbitraries still applicable?

A-5: If the spot (location) as referred to above is within the initial and/or final terminal and the arbitrary was paid solely because the spot was not "another yard", the arbitrary would no longer apply.

Q-6: Does "another location" as used in this rule, include interchange to or from another carrier when such set out and/or pick up had not previously been the practice? -

A-6: This revision of the January 27, 1972 rule makes no change with respect to what cars may be picked up or set out, interchange or otherwise. It merely substituted the words "another location - for "another yard -

Q-7: Under Section 1 of Article X, does one straight pick up at another location in the initial terminal and one straight pick up at an intermediate point between terminals mean that the cars must be first out coupled together on the track on which the pick up is located?

A-7: The national rule did not change the rules and practices in effect on the individual properties as to what constitutes a straight pick up.

Q-8: Under the road/yard provisions of Article IX of the January 27, 1972 UTU National Agreement, as amended by Article X of the August 25, 1978 UTU National Agreement, is it permissible to have a road crew make a set-out on an interchange track in their final terminal prior to yarding their train, or make a pick-up from an interchange track at the initial terminal after commencing the road trip?

A-8: Yes.

ARTICLE X - ROAD-YARD MOVEMENTS

ARTICLE X, Section 1 - Amendment of Article IX, Section 1 of 1972 UTU Nat'l Agreement

Q-9: Carrier instructions place restrictions on the location of certain type cars within the train's consist. If trains are improperly made up by yard crews, road crews are instructed to switch out the cars or rearrange the cars in order to comply with the restrictions. Can these cars be considered "bad order" under the rule so as to require this work of road crews without additional compensation?

A-9: Cars that need to be placed in certain locations of the train and are not otherwise defective are not considered "bad order" for purposes of this rule.

Q-10: Is the Carrier correct in contending that the amendment to Article IX, Section 1, of the January 27, 1972 National Agreement providing for one straight pick up and/or set out at intermediate points enroute is nullified by the savings clause contained in Section 2 stating, "Nothing in this section . . . imposes restrictions - - - where restrictions did not exist prior to - - - this agreement" thus permitting the Carrier to require road crews to perform other than straight pick ups and/or set outs at intermediate points?

A-10: No. The savings clause in Article X of the 1978 National Agreement carried forward .from Article IX Section 1, of the 1972 National Agreement was intended to preserve a carrier's rights under local rules and practices; however, its inclusion in the 1978 National Agreement was not intended to preserve any provisions of the 1972 National Agreement which were modified by the 1978 National Agreement.

AWARDS:

Denied. Claimants in through freight service were required to set out a long car which had been placed next to a short car in error, such placement being prohibited by Carrier's Operating Rules. Claimants sought a yard day alleging they were required to perform yard service at a location where yard crews were on duty. Relying upon PLB 3290, A-95 and PLB 1312, A-593, the Board found that the car in question had been placed in clear violation of a safety rule prohibiting such placement and concluded that under these specific circumstances, the car was "defective" and under Article X, Section 1, the car could be switched out by the road crew without additional compensation. (L. M. Dissent and C. M. Response).

PLB 5142, A-9: UTU v. UP (MP), Ref. Edwin H. Benn, February 20, 1995

X-1.3

ARTICLE X -ROAD-YARD MOVEMENTS

ARTICLE X, Section I - Amendment of Article IX, Section 1 of 1972 UTU Nat'l Agreement

Denied. Claim was filed by through freight crew for a yard day when they were required to hold onto more than 20 cars destined beyond their final terminal when making a pick-up at Texarkana while a yard crew was on duty, relying upon a local memorandum of agreement, dated September 30, 1960. The Board concluded that the national agreements prevail and that Carrier was given the relief it claimed, citing Article X of the 1979 National Agreement and Article VIII, Section l(c) of the 1985 National Agreement, including Question and Answer 10, thereto.

PLB 2105, A-I 76, UTU v. UP (T&P) Ref. John B. Criswell, February 22, 1995,

Denied. Claimants, in pool freight service, were required to make a set out of the 14 head cars to local Yard Track #4 and to yard the balance of their train on Track #6 in the receiving yard at their final terminal. The Board found that the set out in this instance was not on an adjacent track, but was in a separate yard considerably distant. The Board concluded that there have been many awards supporting the right of Carriers to require road crews to set out at another location in their final terminal.

PLB 5407, A-3, UTU v. At&SF, Ref. Irwin M. Lieberman, October 21, 1994,

Denied. At their initial terminal, Claimants were required to pull their train from the south main track into the Inspection Yard Track #2, pick up two cars (which would have fit on the south main track) and depart the terminal. The Carrier relied upon the 1972 National Agreement, as amended by the 1978 National Agreement, which provided that freight crews may be required to make one straight pickup in another location in addition to picking up the train as part of the road trip. For the reasons indicated in Award No. 3, above, the Board found the claim did not have merit.

PLB 5407, A-4: UTU v. AT&SF, Ref. Irwin M. Lieberman, October 21, 1994,

ARTICLE X - ROAD-YARD MOVEMENTS

ARTICLE X, Section 1 - Amendment of Article IX, Section I of 1972 UTU Nat'l Agreement

Denied. Claimants sought a switching allowance because they held onto cars while setting out other cars. The Organization contended that schedule rules concerning the setting out of cars while holding onto cars were not changed by the National Agreements of 1964, 1972, 1978 and 1985. The Board concluded that setting out cars while holding on to other cars is considered a straight set out, citing 1-24102. The work performed by the Claimants was not switching and they are not entitled to a switching allowance.

1-24431, also 1-24426, 1-24427, 1-24428, 1-24429, and 1-24430, UTU v. BN, Ref. Robert Richter, April 20, 1995,

Sustained. Claimants were required to yard their train on multiple tracks at their final terminal. They sought a terminal switching allowance under a local 1976 rule which provided a terminal switching allowance and further provided that doubling over from one or more tracks before departure and/or on arrival at terminal where yard crews are not employed would be considered terminal switching. Carrier argued that local rule had been superseded by 1972, 1978 and 1985 National Agreements, and also cited Q&A 8 to Article X of the 1978 Agreement. The Board ruled that the 1978 National Agreement was tied back to the 1972 National Agreement and that the 1972 National Agreement could not have amended a 1976 local agreement. The Board further found that the Article VIII, Section l(b), of 1985 National Agreement preserved local switching rules for pre-1985 employees.

SAB 18, A-6048 and 6049, UTU v. SP, Ref. Gil Vernon, June 14, 1995,

Denied. A local 1958 merger implementing agreement provided that interseniority district and interdistrict crew assignments would not pick up or set out cars at intermediate points between Bruceton and Memphis. The Board held that where a local agreement contains language which is in contradiction with the specific language in a national agreement, the national agreement will prevail if it is both later than the local agreement and there is nothing in the national agreement which preserves the provisions of the local agreement. The national agreements which allow set outs and pick ups at intermediate points were found to be controlling.

PLB 5441, A-26, UTU v. CSXT Ref. Robert 0. Harris, January 23, 1996,

ARTICLE X - ROAD-YARD MOVEMENTS

ARTICLE X, Section I - Amendment of Article IX, Section I of 1972 UTU Nat'l Agreement

Sustained. Claimants, after arriving at their final terminal, were instructed to take the head 6 cars and place them on track #70A, move the remaining 23 cars to track #3 Crane, set eight cars on track #1, and finally place 1 car on track #2. The Board found that the Carrier violated the National Agreements when it used Claimants, rather than yard crews, to perform what was essentially yard switching work. The set outs that were required by the Carrier after the arrival of the train were not at a different location.

1-24589, UTU v. SOO, Ref. Peter R. Meyers, July 10, 1996,

Sustained. Claimants were called to operate a unit coal train which had arrived at Cheyenne with two overloaded cars. Claimants were instructed to make two separate pulls of their entire train so as to spot the two overloads next to a crane which was used to unload the excess coal from the overloaded cars. Claimants sought a one-hour switching arbitrary for performing yard switching at their initial terminal. The Board found that Carrier's settlement of previous similar claims by payment of the claims as "penalty switching" after the 1978 National Agreement was controlling. The Board further found that the language allowing the spotting or pulling of cars set out or picked up was not applicable to the movement here.

PLB 5400, A-21, UTU v. UP, Ref. H. Raymond Cluster, September 27, 1996,

Denied. Claimants arrived at their final terminal and were instructed to yard their train on the main line, detach the caboose, set out the ten rear cars into Track 119, an industry track, and couple the remainder of their train back onto the caboose on the main line. The Board held that for trains yarded on the main line, a set out to a yard or industry track is "another location" even though it may be located within switching limits.

SAB 18, A-6085, UTU v. SP, Ref. Gil Vernon, February 13, 1997,

ARTICLE X - ROAD-YARD MOVEMENTS

ARTICLE X, Section 1 - Amendment of Article IX, Section I of 1972 UTU Nat'l Agreement

Denied. Claimants were operating in interdivisional service. At their final terminal they were instructed to perform moves with the piggyback cars at the ramp for unloading. The Organization relied upon the local December 12, 1991 Interdivisional Service Agreement which provided payment of actual time, with a minimum of 1 hour, for performing station or industrial switching. Carrier relied upon Article X of the 1978 National Agreement and Article VIII, Section 1 of the 1985 National Agreement. The Board held that, at best, the Organization's arguments make the language of the prior agreements ambiguous. Ambiguous language is insufficient to carry the Organization's burden of proof.

PLB 5416, A-24, UTU v. CSXT, Ref. Edwin H. Benn, March 12, 1997

Sustained. Claimants, upon arrival at the final terminal, were instructed cut away from their train and take their engines to the Miami inbound track at Fisher Road, take charge of two lite engines, and take all the engines to Buckeye engine pad. The Organization contended that the two lite engines were not a part of Claimants' train. The Carrier argued that Claimants merely exchanged engines or added and subtracted power from their consist, which is permissible under the national agreements. The Board found that the qualifying phrase "as part of the road trip" cannot mean "during the road trip", a much broader concept. The addition of the two locomotive to the consist here was not in connection with Claimants' own train and there was no "exchange" of units as that term is commonly understood.

SBA 910, A-746, UTU v. CR, Ref. Helen M. Witt, December 12, 1996

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI - General

Q-1: May hostlers and hostler helpers be considered or used as yard or yard engine crews under provisions of the combination road-yard service zones rules?

A-1: Whether or not hostlers and hostler helpers may be considered or used as yard or yard engine crews is a matter to be determined on a local basis in accordance with existing agreements, rules or practices.

XI-G.1

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 1 - First Paragraph

Q-1: Does the carrier have the sole right to establish the combination road-yard service zones?

A-1: Yes.

Q-2: Should the carrier notify the General Chairman in writing when and where it establishes each combination road-yard service zone?

A-2: Yes; such notification will include the specific limits of the zones.

Q-3: Does the term "switching limits" as used in the first paragraph to Section 1 mean the switching limits established or recognized for general switching purposes?

A-3: Yes. It is not intended that the combination road-yard service zones can be measured from points outside the general switching limits where yard crews may be operated under special or limited circumstances.

Q-4: What is the meaning of the term "at points where yard crews are employed"?

A-4: It has the same meaning and should be applied in the same manner as under Article IX of the National Agreement of January 27, 1972 with the UTU.

Q-5: Can employees of a carrier who may be restricted from performing road service on that carrier be used to perform service under Section 1?

A-5: This is a matter to be determined on a local basis in accordance with existing agreements, rules or practices.

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 1 - First Paragraph

Q-6: Can the carrier require a yard crew from one seniority district to meet the service requirements of a customer if such customer is located in road territory in another seniority district on that carrier within the combination road-yard service zone?

A-6: Yard crews within the limits of the rule can substitute for road crews provided the yard crews can be used in such road territory pursuant to provisions of existing national agreements under which yard crews may be used outside switching limits to perform service for new industries. However, it is not intended that a yard crew from one seniority district be substituted for a yard crew in another seniority district.

Q-7: Is an assignment classified by agreement as a road job operating under road rules subject to the provisions of Section I?

A-7: Section I applies only to yard crews.

XI-1.2

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 1(a) - Industrial Switching

Q-1: After a carrier establishes a combination road-yard service zone, will a subsequent extension of switching limits under existing agreements establish a new point for determining road-yard service zones?

A-1: No. Combination road-yard service Zones are measured from the switching limits that existed as of the date of the agreement.

Q-2: Can a carrier establish combination road-yard service zones under Section 1(a) which may extend into or overlap one another?

A-2: Yes. The road-yard service zone is determined or measured from the switching limits existing on the date of the agreement for each point where yard crews are employed.

Q-3: (a) Is it permissible for a yard crew to leave its own switching limits to travel over road territory and enter the switching limits of another point where yard crews are employed to perform work at or beyond that point?

(b) Does the distance limitation apply from the switching limits of its own point to the switching limits of the second point?

A-3: (a) No.

(b) Yes.

Q-4: Is there any directional restriction in the determination or measurement of the roadyard service zones under Section I(a)?

A A-4: No. The road-yard service zones under Section 1 (a) can be established beyond existing switching limits in any direction.

Q-5: May a yard crew from one point where yard crews are employed be used to perform service under Section I at another point where one yard crew is employed and such service is to be performed within the second 12-hour period referred to in Article V, Combination Road-Yard Service Zones, Section 5 of the National Agreement of June 25, 1964?

A-5: No.

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 1(b) - Work Permitted

Q-1: Can a yard crew performing service under Section 1 be required to perform work other than that which is specified in Section 1 if such other work could have been required by a road crew prior to the adoption of Section I?

A-1: No. The use of yard crews under Section 1 is limited to the service specifically provided for in paragraph (b) thereof.

Q-2: A short turnaround road local is regularly assigned six days a week to service an industry two miles outside switching limits. Usually the work is completed in less than eight hours, but on occasion makes a second trip to the industry which results in overtime to the road crew. May the carrier use a yard crew to perform the second trip to eliminate overtime even though the road crew was available and could easily perform the service within the Hours of Service Law?

A-2: If the short turnaround local was otherwise available, a yard crew could not be used solely to avoid overtime for the road crew; however, if such use would result in the commencement of a new day, the carrier has the option to use either the road crew or the yard crew. The service to be Performed must meet the criteria outlined in Section 1 (b).

Q-3: In application of Section 1(b), may a yard crew be sent from Point "All to Point "B" (less than 10 miles from switching limits of Point "A") to service a refinery on the rest days of a regularly assigned yard crew if the work it will perform had been previously performed exclusively by extra yard crews called to report at that point for that specific purpose?

A-3: No.

Q4: May a yard crew be sent from Point "A" to a refinery at Point "B" (not yard territory) solely for the purpose of performing a switching service of cars already located at that industry, without making a delivery of traffic from Point "A" or making a movement of cars from Point "B" to Point "A"?

A-4: Yes, provided that the service to be performed meets the criteria set forth in the rule.

XI-1(b).1

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 1(b), - Work Permitted

Q-5: May the yard crew in the above example be sent eastward from Point "All to switch at Point "B" (which is 5 miles from the switching limits of Point "A") then move cars picked up there to Point "C" (which is also within the established road-yard service zone) for delivery there? (See illustration below.)

A-5: Yes, if all the service to be performed meets the criteria set forth in the rule.

Q-6: If the switching limits of Point "A" are less than ten miles from the switching limits of Point "B" with yard crews employed at both points, may a yard crew be sent from Point "A" to Point "B" for industrial switching purposes of a yard crew is or is not on duty at the time?

A-6: No - the yard crew from Point "A - would be substituting for a yard crew at Point "B".

Q-7: May a yard crew performing service under Section I be used to perform service under Section 2 before returning to the yard? If so, how is the crew to be compensated?

A-7: Yes. The crew would be compensated for all time outside switching limits the same as though all the service outside switching limits had been performed under Section 2.

NO - If necessary to leave yard engine in road-yard service zone, time will be continuous if yard crew returns to bring yard engine to yard. If another yard crew is used to bring yard engine in, that service will be performed under Section 2 and compensated accordingly.

XI-I(b).2

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 1(b), - Work Permitted

Q-8: Can the carrier be considered a customer under Section I in order to send yard crews to an industry to expedite the movement of cars solely for the convenience of the carrier?

A-8: The word "customer", as used in Section 1, was not meant to apply to the carrier.

Q-9: May a carrier properly use a yard crew to provide service on a regular basis to a customer within the Road-Yard Service Zone?

A-9: No. Section I (b) was not intended to permit substitution on a regular basis of a yard crew or crews for the "road crew or crews normally performing the service. - One or more of the conditions specified in Section I (b) should exist on each occasion a yard crew is utilized.

Q-10: May a carrier properly use yard crews to service customers within road-yard service zones for the sole purpose of avoiding the payment of overtime to road crews performing the service?

A-10: No, the carrier must meet the requirements of Section 1 (b) in instances where the yard crew is used.

XI-1(b).3

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 1(c) - Not Used to Eliminate Road Crews

Q-1: An industry located outside existing switching limits has heretofore been service by road crews. Does this rule contemplate the abolishment of such road assignments so that all work is to be performed by yard crews?

A-1: No. Section 1 (c) specifically provides that the use of yard crews in road-yard service zones may not be used to reduce or eliminate road crew assignments working within such zones.

AWARDS:

Denied. Carrier extended switching limits at its Louisville terminal as provided in Article VI of the January 27, 1972 National Agreement. Prior thereto a road assignment had set out and picked up cars at United Industries and Riverport Facility, both of which were inside the switching limits following the extension of switching limits. Carrier abolished the road assignment and transferred the work previously. performed by the road assignment inside the extended switching limits to a new yard assignment and transferred the work outside the extended switching limits to another road assignment. The Organization contended that Article XI, Section 1(c) prevented the Carrier from transferring work from the road assignment to a yard assignment. The Carrier contended that the industries in question were not located within the road-yard zone and any restrictions applicable to road-yard zones were not applicable in this case. The Board held that Carrier had the right, by virtue of the extension of switching limits, to abolish the road assignment which had been providing service to the industries and replace it with a yard job.

Arb. Bd. 503, UTU v. - (L&N), Ref. Don B. Hays, May 14, 1996

Since 1978, Carrier's yard crews have performed customer switching in these Road/Yard Service Zones without any additional compensation and without penalty payments to road crews. These zones extend in all directions from a yard's given limits and on all seniority districts within the zones. The service in these zones has correctly been accepted as allowable work for yard crews.

PLB 959, A-262, UTU v. AGS, Ref. John B. Criswell, February 19, 1993

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2 - First Paragraph

Q-1: When a carrier elects to adopt this Section 2 in lieu of retaining existing rules or practices and establishes a combination road-yard service zone, can the carrier utilize another road crew to handle disable road trains or trains tied up under the Hours of Service Act within the combination road-yard service zone?

A-1: Yes. The carrier has the option to use either road or yard crews.

Q-2: Under Section 2, does the carrier have the sole right to establish combination roadyard service zones?

A-2: Yes.

Q-3: Under Section 2, can a yard crew assigned at a point other than the initial and final terminals of the assignment of the road train which is disabled or the road train which is tied up under the Hours of Service Act, be used to handle such road trains?

A-3: No.

Q-4: Does the term "switching limits" as used in the first paragraph to Section 2 mean the switching limits established or recognized for general switching purposes?

A-4: Yes. It is not intended that the combination road-yard service zones can be measured from points outside the general switching limits where yard crews may be operated under special or limited circumstances.

Q-5: When a train is disabled or tied up under the Hours of Service Act within the 15 mile zone and no yard crews are on duty, should a road crew be called to handle the train?

A-5: The carrier has the option to use either road or yard crews inasmuch as the rule does not affect the carrier's right to use road crews in accordance with existing rules or practices whether or not yard crews are on duty.

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2 - First Paragraph

Q-6: Where restrictions now exist on a property that prohibit the use of yard crews going outside the assigned territory of their assignment, does this rule give the Carrier the right to use such yard crews to perform the service under Section 2?

A-6: Yes.

Q-7: Under Section 2, may yard crews of a carrier from one seniority district be required to handle disabled trains or trains tied up under the Hours of Service Act which are manned by road crews from another seniority district of that carrier?

A-7: Yes, provided disabled road trains and trains tied up under the Hours of Service Act could have been handled by yard crews from another seniority district within the general switching limits which existed immediately prior to the 1978 national agreements for the terminal involved.

Q-8: Can yard crews of one carrier operating within a consolidated yard or terminal be required to handle disabled trains and trains tied up under the Hours of Service Act which are manned by road crews of another carrier?

A-8: Yes, subject to the provisions of the agreement governing the operations of the consolidated terminal.

XI-2.2

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(a) - Disabled/HOSL Trains

Q-1: If the carrier extends switching limits after it has established combination road-yard service zones, will the extended switching limits establish a new fifteen (15) mile combination road-yard service zone?

A-1: No. Combination road-yard service zones are measured from the switching limits that existed as of the date of the agreement.

Q-2: Can a carrier require a yard crew to perform service under Section 2 if the crew is not qualified to perform road service?

A-2: This is a matter to be determined on a local basis in accordance with existing agreements, rules or practices.

Q-3: When does a road train crew become "tied up under the Hours of Service Act" for purposes of Section 2?

A-3: When the crew of the road train is relieved and compensated under existing agreements or practices applicable to crews being relieved for purposes of the Hours of Service Act.

Q4: (a) Does Paragraph (a) of this Section 2 apply only to trains that are disabled or tied up under the Hours of Service Act?

(b) If so, can yard crews be used in lieu of road crews?

A-4: (a) Yes.

(b) Yes. The carrier has the option to use either yard or road crews.

Q-5: The distance between the switching limits of the final terminal and the switching limits of an adjacent intermediate terminal is less than 15 miles. Under such circumstances, may a yard crew from the final terminal of the run be used beyond the switching limits of an adjacent intermediate terminal of the carrier to handle a disabled train or a train tied up under the Hours of Service Act?

A-5: Yes, for the reason that the yard crew would be substituting for the road crew.

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(a) - Disabled/HOSL Trains

Q-6: In the performance of service permitted under Section 2, may a yard crew be sent eastward from Point "A", which is not the terminal of a disabled road train, to a junction point with another line at Point "B", then southward on the other line to Point "C" to pick up the road freight, then travel northward through to the road train's final terminal at Point "D", then return to its own reporting point, Point "A"?

A-6: No. "A" is not the initial or final terminal for the crew of the disabled train.

Q-7: May a road crew be sent a distance greater than fifteen miles from its switching limits to move a disabled road train to its final terminal if the disabled train is within fifteen miles of its own final terminal?

A-7: The rule does not affect the carrier's right to use road crews in accordance with existing rules or practices whether or not yard crews are on duty.

Q-8: Does the fifteen-mile limitation apply to the switching limits of the road train's final terminal, even though there are no tracks at that point on which the train could be disposed of, and the yard at which the road train normally terminates is six miles within the switching limits of the terminal?

A-8: Yes. The 15-mile limitation is measured from the existing switching limits of the terminal and not from the point where the train is yarded.

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(b) - Work Permitted

Q-1: If a yard crew is called outside of prescribed starting times for the purpose of handling a disabled train or a train tied up under the Hours of Service Act, how are they compensated?

A-1: This provision does not change the application of the yard starting time rules.

Q-2: Do the provisions of Section 2 have any application at intermediate terminals?

A-2: No.

Q-3: May a yard crew from an intermediate point be used to handle a train disabled or tied up under the Hours of Service Law to the final terminal of the assignment where no yard crews are assigned so long as they are within the 15 miles?

A-3: No.

Q-4: If a train is disabled or tied up under the Hours of Service Act at a point within the 15-mile limit of the final terminal, and there is a point enroute where a yard crew is assigned, can the carrier direct a yard crew from this point to handle the disabled or tied up train into the final terminal?

A-4: No.

Q-5: Are yard crews required to operate under train orders when dispatched to bring in a train tied up under the Hours of Service Law? For example, the road crew tied up had a train order to meet an opposing train within the 15-mile area, such area being in manual block or automatic block territory.

A-5: Carrier's operating rules are controlling.

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(b) - Work Permitted

Q-6: When a yard crew is transported by a highway vehicle to perform service under Section 2(b), when does the crew's time start?

A-6: Mere local rules or practices exist which encompass this situation, such rules or practices will apply. Otherwise time will be computed from when the crew leaves company property or from the time the trip begins if originating off company property.

Q-7: When a yard crew is transported by highway vehicle to perform service under Section 2(b), where does the highway mileage begin and end?

A-7: Mere local rules or practices exist which encompass this situation, such rules or practices will apply. Otherwise, rail miles outside switching limits will be used.

Q-8: Are yard crews while on overtime on their regular assignment, and used to perform service outside switching limits under this rule, to be compensated for time consumed at the time and one-half rate for the class of service performed in addition to the regular yard rate?

A-8: The parties are agreed that payment for combined service is to be treated the same as the emergency rule. Accordingly, the time in both services is combined to provide for payment at time and one-half for time in excess of eight hours.

Q-9: Are yard men who have not passed the required conductor's promotion examination going to be required to copy train orders and be in charge of trains in the 15-mile zone?

A-9: This is a matter to be determined on a local basis in accordance with existing agreements, rules or practices.

Q-10: If a yard crew is transported by car or some other vehicle to perform service under Section 2, would they be entitled to deadhead pay?

A-10: No.

XI-2(b).2

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(b) - Work Permitted

Q-11: A road crew within a road-yard service zone is relieved before the time of the crew has expired under the Hours of Service Law. May a yard crew be sent to bring this train into the terminal in accordance with Section 2?

A-11: Yes, provided the road crew was properly relieved and compensated under existing rules pertaining to crews being relieved for purposes of the Hours of Service Act.

Q-12: Given the same facts as above, except that the carrier believes that the time of the crew- may expire under the Hours of Service Law before the train enters the terminal (owing to yard congestion, etc.), may the yard crew then handle the train into the terminal before the road crew's time actually expires?

A-12: Yes, provided the road crew was properly relieved and compensated under existing rules pertaining to crews being relieved for purposes of the Hours of Service Act.

Q-13: A derailment occurred in a road crew's train at an intermediate point, but within 15 miles of a yard crew's switching limits. There are no switching limits at the road crew's initial and final terminal. Under such circumstances does Section 2(b) permit the yard crew at the intermediate point to go outside of switching limits, but within 15 miles of switching limits to rerail a car?

A-13: No. This rule has no application at intermediate points.

Q-14: May a yard crew performing service under Section 1 be used to perform service under Section 2 before returning to the yard? If so, how is the crew to be compensated?

A-14: Yes. The crew would be compensated for all time outside switching limits the same as though all the service outside switching limits had been performed under Section 2.

NO - If necessary to leave yard engine in road-yard service zone, time will be continuous if yard crew returns to bring yard engine to yard. If another yard crew is used to bring yard engine in, that service will be performed under Section 2 and compensated accordingly.

XI-2(b).3

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(b) - Work Permitted

Q-15: Within Road-Yard Service Zones when a yard crew is used to handle disable road trains or those tied up under the Hours of Service Act, may such yard crew be required to set out a bad order car or cars from the road train to be handled prior to bringing the train into the final terminal?

A-15: Yard crews may be required, without additional payment, to set out a bad order car or cars damaged to the extent or whose condition is such that it would or could interfere in the safe handling of the train into the final terminal.

Q-16: A road train neither disabled nor tied up under the Hours of Service Act, but which cannot be brought into its final terminal because of yard congestion or other reasons, is left on the main line or placed on a siding within the road-yard service zone by the road crew, who then complete their trip into the final terminal with their engine or engine and caboose.

Under the above circumstances, may a yard crew be used to handle these cars into the final terminal of the road crew?

A-16: No, the use of a yard crew under such circumstances is not permissible under Section 2 (b).

Q-17: What constitutes a "disabled train"?

A-17: Typically a disabled train is one which cannot reach the terminal unassisted. However, unusual situations involving "disabled trains" should be dealt with on a case by case basis.

XI-2(b).4

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(b) - Work Permitted

Q-18: What is the intent of the parenthetical phrase "(except where existing agreements require payment at yard rates)" as contained in Section 2(b)?

A-18: The intent of the parenthetical phrase is indicated in the following examples:

Example No. I

Mere regularly assigned to perform switching within switching limits, yardmen shall not be used in road service where road crews are available except in cases of emergency. Men yard crews are used in road service under conditions just referred to, they shall be paid miles or hours, whichever is greater, with a minimum of one hour for the class of service performed in addition to their regular yard pay and without any deduction therefrom for the time consumed in said service.

Example No. 2

Mere regularly assigned to perform service within switching limits, yardmen will not be used in road service when road crews are available, except in case of emergency. Men yardmen are used in road service under emergency conditions, they shall be paid mile or hours, whichever is greater, with a minimum of one (1) hour at yard rates, in addition to their regular yard pay and without deduction therefrom for the time consumed in road service.

Example No. 3 -

Where regularly assigned to per form service within switching limits, yard crews used outside of switching limits to perform road service shall be paid miles or hours, whichever is the greater, with a minimum of one (1) hour at yard rates, in addition totheir regular yard pay and without any deduction therefrom for the time consumed in road service.

Note:
This example would only have application in the absence of a rule such as shown under Example Nos. 1 and 2.

Inasmuch as the rule in effect in Example No. I does not require payment at the yard rate, the parenthetical exception is not applicable. Conversely, the parenthetical exception is applicable in Examples No. 2 and 3, as these rules do require payment at yard rates.

XI-2(b).5

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(b) - Work Permitted

National Mediation Board
Interpretation No. 143

On April 8, 1980, the Brotherhood of Locomotive Engineers (BLE) and the United Transportation Union (UTU) jointly invoked the services of the National Mediation Board under the provisions of Section 5, Second, of the Railway Labor Act, as amended, 45 U.S.C. §155, Second, for the interpretation of certain provisions of agreements between the BLE and the National Railway Labor Conference (NRLC), and the UTU and NRLC.

The BLE July 26, 1978 Mediation Agreement was reached through mediation in Case No. A-10224. The UTU August 25, 1978 Mediation Agreement was reached in Case No. A10222.

ISSUES

There are two unresolved question involving the "Combination Road-Yard Service Zones" provisions (Article VIII and XI, respectively) of such agreements. The pertinent provisions of the agreements and the questions are as follows:

"Section 2 - At points where yard crews are employed, combination road-yard service zones may be established within which yard [engine] crews may be used to perform specified service outside of switching limits under the following conditions:

"(b) Within Road-Yard Service Zones, yard [engine] crews may be used to handle disabled road trains or those tied up under the Hours of Service Act outside their final terminal without penalty to road crews. For such service yard [engine] crews shall be paid mile or hours, whichever is the greater, with a minimum of one (1) hour for the class of service performed (except where existing agreements require payment at yard rates) for all time consumed outside of switching limits. This allowance shall be in addition to the regular yard pay and without any deduction therefrom for the time consumed outside of switching limits.".

XI-2(b).6

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(b) - Work Permitted

National Mediation Board
Interpretation No. 143
(continued)

ANSWER

No. The service permitted by Section 2 is limited to handling the train in road territory into its initial or final terminal. Likewise, the payment, so long as the work is necessary to perform the service permitted by the rule, is confined to that provided for in Section 2(b). However, there may be arbitrary payments under applicable road service rules for additional service during the road handling of the train after the yard crew takes charge of the train.

By direction of the NATIONAL MEDIATION BOARD.

/s/ Rowland K. Quinn, Jr.
Rowland K. Quinn, Jr.
Executive Secretary

NMB Interpretation No. 143, April 14, 1980,

Q-19: When a yard crew is dispatched to handle a road train under the provisions of Section 2, may such crew be required while outside its switching limits to pick up, set out, or to perform any road switching that was to be performed by the road crew?

#A-19: No. The yard crew while in road territory is limited to handling necessary to move the train in road territory into its initial or final terminal.

XI-2(b).7

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(b) - Work Permitted

Q-20: When a yard crew is dispatched to handle a road train under the provisions of Section 2, is such crew entitled to additional payments under other existing rules such as engine exchanges?

#A-20: No. The service permitted by Section 2 is limited to handling the train in road territory into its initial or final terminal. Likewise, the payment, so long as the work is necessary to perform the service permitted by the rule, is confined to that provided for in Section 2 (b). However, there may be arbitrary payments under applicable road service rules for additional service during the road handling of the train after the yard crew takes charge of the train.

- (Q&A'S 19 AND 20 ARE BASED UPON NMB INTERPRETATION NO. 143.)

Q-21: A road train within the 15-mile Road-Yard Service Zone is tied up on the am track under the Hours of Service Act. Because of yard congestion or for other valid reasons, it is not possible to yard the train, but it is necessary to clear the main track for other train movements. Under the above circumstances, may a yard crew be used to clear the main track by placing the tied up train intact on a siding within the Service Zone, including any necessary cutting of crossings, and then subsequently use a second yard crew to bring the train on into the terminal?

A-21: Yes, under circumstances as outline above.

Q-22: The following rule is in effect on carrier "A":

"When two or more locomotives of different weights on drivers are used during a trip or day's work, the highest rate applicable to any locomotive used shall be paid for the entire day or trip."

On such carrier or other carriers where similar rules are in effect does the highest rate based on weight on drivers apply to the entire tour of duty, including the additional payment under Section 2, when two or more locomotive consists of different weight on drivers are used?

A-22: Yes. (Due to the long standing pendency of this dispute, this interpretation is applicable to claims arising on or after March 1, 1983.)

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(b) - Work Permitted

Q-23: A road train has excessive tonnage which prevents it from operating over a grade. Although there is a side track where the road crew could double a portion of their train and enable them to negotiate the grade without assistance, is it permissible for the carrier to operate a yard crew out to assist the stalled train on the basis that they would be assisting a disabled train?

A-23: No.

Q-24: A road crew has sufficient power to operate over the terrain but experiences problems with a diesel unit. This in turn causes the road train to stall. Rather than having the road crew double into a siding, is it permissible for the carrier to operate a yard crew out to assist the train over a grade on the basis that they would be assisting a disabled train?

A-24: Yes.

Q-25: A road crew at a point within the 15 mile zone experiences a draw bar failure on the wrong end of the car. The road crew handles the head end portion of the train into the terminal (a definite terminal) where yard engines are employed and on duty. Is it permissible for the carrier to utilize the services of a yard crew to pun in the rear end of the separated road train on the basis that the move involves a disable train?

A-25: Yes, under these specific circumstances.

Q-26: A road train has a derailment 11 miles outside its initial terminal switching limits and approximately 130 miles short of its final terminal.

(a) Does the rule permit the use of a yard crew from the road crew's final terminal to handle the train to its final terminal?

(b) May a yard crew from the initial terminal be used to return the rear portion of the disabled train to the initial terminal?

A-26: (a) No.

(b) Yes.

XI-2(b).9

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(b) - Work Permitted

Q-27: A yard crew was sent outside switching limits to relieve a road crew tied up under the Hours of Service Act and handle the train into the final terminal. While in the process of handling this train, the yard crew was directed to cut off its power and assist another stalled road train, shoving it a distance of approximately one mile. Is it permissible under these circumstances to use a single yard crew to handle both a train tied up under the Hours of Service Act and to also assist a second stalled train while in the road yard service zone?

A-27: Yes, provided that the stalled road train had sufficient power to operate over the terrain. (See Question - Answer No. 24 under this Section, as distinguished from Question -Answer No. 23).

Q-28: Does the Carrier have the right to use engineers, who have been restricted to yard service by the Carrier for physical reasons, to handle disabled trains and/or trains tied up under the Hours of Service Act outside switching limits in road-yard service zones?

A-28: This is a matter to be determined on a local basis in accordance with existing agreements, rules or practices.

Q-29: If penalty payments for violations of the schedule agreement occur while a yard crew is performing service in accordance with this rule, may the Carrier deduct the time spent by the yard crew in road service from the penalty payment allowed?

A-29: The yard crew is entitled to payment under the national rule for the time spent outside of switching limits. Penalty payments for service performed outside the rule is a matter to be determined locally by the parties.

Q-30: Carrier instructions require road crews to be certain that their trains are within the 15-mile road/yard service zone before they are tied up under the Hours of Service Law. In cases where these road trains are tied up outside the 15-mile limit, can the Carrier require yard crews to perform service under this rule?

A-30: No. The rule limits the use of yard crews to within the 15-mile limit.

XI-2(b).10

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(b) - Work Permitted

Q-31: A yard crew is used within the 15-mile zone to relieve a road crew tied up under the Hours of Service Law. Upon arrival, within switching limits, the yard crew is required to set out cars on a foreign Carrier's interchange track, such set out being a regular function of the road crew being relieved. Under these circumstances, is the yard crew entitled to an additional day's pay for performing service other than yarding the train in its final terminal?

A-31: No, providing that yard crews also have the right to deliver interchange cars on this track.

Q-32: A yard service engineer, performing service on a holiday and qualified to receive the time and one-half rate for such service, is used within the 15-mile zone to handle a road train tied up under the Hours of Service Law. Is the engineer entitled to compensation at the time and one-half rate for the time consumed performing service outside the switching limits?

A-32: No. The engineer would only be entitled to the straight time rate for the service performed outside switching limits, as provided for in application of the "emergency rule –

AWARDS:

Denied. Claimant yard crew was required to leave switching limits and proceed to a point outside the 25-mile road-yard zone (as amended by Article VIII of the 1985 National Agreement) to bring in a train tied up under the Hours of Service Law. Carrier allowed Claimants a penalty yard day for being required to perform service on the road beyond the 25-mile road-yard zone, in addition to their regular yard pay. Claimants claimed they should also be paid for the time consumed or miles traversed within the 25-mile road-yard zone. The Board relied upon PLB 5464, A-15, which held that there is simply no provision for the piggy backing of an allowance for doing permissible work on top of an allowance for doing impermissible work for the same work event. The work cannot be permissible (within 25 miles) and impermissible (outside 25 miles) at the same time.

PLB 5658, A-60, UTU v. BN, Ref. H. Raymond Cluster, September 30, 1996

XI-2(b).11

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 2(b) - Work Permitted

Denied. A road crew had performed service for 6 hours and 45 minutes, were tied up at Forsythe for 6 hours and 55 minutes, and were then called to handle a train from Forsythe to Glendive. As they approached Glendive, the yard was congested and Carrier made a determination, based upon the existing circumstances, that the crew would be unable to take their train into Glendive before the expiration of their time under the Hours of Service Law. The crew left their train at Marsh, 19.4 miles west of Glendive, 3 hours and 20 minutes after going on duty and rode a following train into Glendive, and were tied up there 6 hours and 10 minutes after going on duty. The Organization claimed that a yard crew was improperly used to bring in this train because the train had not been tied up under the Hours of Service Law, and claim was filed by road freight employees who alleged they stood for such service. The Carrier contended that it is common practice to relieve crews and transport them to their final terminal to be tied up when it appears that they will not be able to complete their trip within the HOSL, and that such crews have been considered and paid as being tied up under the Law. The Board held that Carrier may relieve crews under the Hours of Service Law when it reasonably believes under the operating conditions pertaining to the situation that they will not be able to complete their trip within the hours allotted by the Law. Since the yard crew was used to handle a train tied up under the HOSL, within the zone specified in Article XI, as amended by Article VIII Section 2 of the October 31, 1985 UTU National Agreement, there was no basis for the claim by a road crew and such claim was denied..

PLB 5663, A-40, UTU v. BNSF, Ref. H. Raymond Cluster, July 8, 1997

XI-2(b).12

ARTICLE XI - COMBINATION ROAD-YARD SERVICE ZONES

ARTICLE XI, Section 3 - Not Subject to Equalization

Q-1: Under Section 3, would this eliminate the equalization of miles as between road and yard service crews referred to in Section 2 of Article VI of the January 27, 1972 UTU Agreement?

I as n

A-1: No. Section 3 applies only to the service prescribed by that Article where Section 2 of Article VI of the January 2 7, 1972 UTU Agreement operates independently and continues to apply to the service provided for in that Article.

AWARDS:

Unlike the 1972 UTU National Agreement that provided for equalization of time when yard crews serviced industries under the 4-mile extension of switching limits, no equity arrangement is required for work performed in the Road/Yard Service Zones. The fact that none presently exists at numerous locations on Carrier's lines indicate that this is proper.

PLB 959, A-262, UTU v. A GS, Ref. John B. Criswell, February 19, 1993

XI-3.1

ARTICLE XII - BEREAVEMENT LEAVE

ARTICLE XII - General

Q-1: How are the three calendar days to be determined?

A-1: An employee will have the following options in deciding when to take bereavement leave:

a) three consecutive calendar days, commencing with the day of death, when the death occurs prior to the time an employee is scheduled to report for duty;

b) three consecutive calendar days, ending the day of the funeral service, or

c) three consecutive calendar days, ending the day following the funeral service.

Q-2: Does the three (3) calendar days allowance pertain to each separate instance, or do the three (3) calendar days refer to a total of all instances?

A-2: Three days for each separate death; however, there is no pyramiding where a second death occurs within the three-day period covered by the first death.

Example: Employee has a work week of Monday to Friday - off-days of Saturday and Sunday. His mother dies on Monday and his father dies on Tuesday. At a maximum, the employee would. be eligible for bereavement leave on Tuesday, Wednesday, Thursday and Friday.

Q-3: An employee working from an extra board is granted bereavement leave on Wednesday, Thursday and Friday. Had he not taken bereavement leave he would have been available on the extra board, but would not have performed service on one of the days on which leave was taken. Is he eligible for two days or three days of bereavement pay?

A-3: A maximum of two days.

Q-4: Will a day on which a basic day's pay is allowed account bereavement leave serve as a qualifying day for holiday pay purposes?

A-4: No; however, the parties are in accord that bereavement leave non-availability should be considered the same as vacation non-availability and that the first work day preceding or following the employee's bereavement leave, as the case may be, should be considered as the qualifying day for holiday purposes.

ARTICLE XII - BEREAVEMENT LEAVE

ARTICLE XII - General

Q-5: Would an employee be entitled to bereavement leave in connection with the death of a half-brother or half-sister, stepbrother or stepsister, stepparents or stepchildren?

A-5: Yes as to haif-brother or half-sister, no as to stepbrother or stepsister, stepparents or stepchildren. However, the rule is applicable to a family relationship covered by the rule through the legal adoption process.

Q-6: Would bereavement leave be applicable during an employee's vacation period?

A-6: No.

Q-7: An employee qualifies for holiday pay on a holiday which occurs on a day the employee also qualifies for bereavement leave pay. Under these circumstances, is the employee entitled to be paid both the holiday and bereavement leave allowance?

A- 7: No. The employee would be entitled to only one basic day's pay.

Q-8: An employee in pool freight service is granted bereavement leave on Wednesday, Thursday, and Friday. He was paid under the bereavement leave rule for Wednesday and Thursday; however, his claim for Friday, a day on which the crew of which he was a member was at the away-from-home terminal and received an authorized return deadhead trip for which they were allowed 141 miles, was denied. Is he entitled to pay under the bereavement leave rule for Friday?

A-8: Yes, inasmuch as the deadhead trip was authorized and represents time lost on a separate qualifying calendar day.

XII-G.2

ARTICLE XIII - OFF-TRACK VEHICLE ACCIDENT BENEFITS

ARTICLE XIII - General

Q-1: As of the effective date of the revision of the off-track vehicle accident benefit provisions, a certain employee was receiving a loss of time benefit ($100 per week, less RUIA sickness benefits, for up to 156 consecutive weeks). Should his benefit rate be increased from $100 to $150 effective as of such date?

A-1: The intent of the agreement provisions was that the date of the accident should be controlling with respect to the benefit rate. If the accident occurred on or after 90 days after the date of the Agreement involved, the increased benefit rates apply.

XIII-G.1