

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

INTERNATIONAL ASSOCIATION OF	)	
SHEET METAL, AIR, RAIL AND	)	
TRANSPORTATION WORKERS,	)	
TRANSPORTATION DIVISION,	)	Civil Action No. 8:25-cv-00740-RJR
	)	
Petitioner,	)	
	)	
v.	)	
	)	
UNION PACIFIC RAILROAD	)	
COMPANY,	)	
	)	
Defendant.	)	

PLAINTIFF SMART-TD’S CONCISE STATEMENT OF MATERIAL FACTS

In accordance with Local Rule 56(a)(1), Plaintiff International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (“SMART-TD”) states the following as its Concise Statement of Material Facts.

The Parties to the Dispute

1. SMART-TD is a labor organization representing employees in the transportation industry, including freight and passenger railroad conductors. (Exhibit (“Ex.”) A, Declaration of Brent Leonard (“Leonard Decl.”) at ¶3)

2. Union Pacific Railroad Company is a railroad or a “carrier” as defined in the Railway Labor Act (“RLA”) and employs, among other crafts, conductors represented by SMART-TD. (Leonard Decl. at ¶4).

3. Union Pacific and SMART-TD are parties to numerous collective bargaining agreements that govern rates of pay, health and welfare benefits, and work rules, amongst other topics. (Leonard Decl. at ¶5).

Collective Bargaining Under the RLA

4. Under the RLA, collective bargaining agreements do not expire; rather, the parties are free to negotiate changes to existing agreements after the expiration of a mutually agreed-upon moratorium period contained within the agreement from the past round of negotiations. (Leonard Decl. at ¶6).

5. In national handling, railroads typically bargain together in a coalition through their representative, the National Carriers' Conference Committee ("NCCC"). (Leonard Decl. at ¶8). Carriers are not required to participate in the coalition and may instead bargain independently. (*Id.*)

6. In national handling, railroad unions typically form bargaining committees comprised of various union officers who then bargain with the Carriers' chosen representative. (Leonard Decl. at ¶8). Sometimes, like carriers, different unions will bargain together in a coalition in national handling. (*Id.*).

7. In contrast to national handling, "local handling" is collective bargaining that occurs on a carrier-by-carrier basis relating to matters of concern that are particular to that railroad or its predecessor lines. (Leonard Decl. at ¶9). Such negotiations are typically between representatives of the carrier and general committees of adjustment, who represent employees on certain territories of a carrier. (*Id.* at ¶11).

2019 Collective Bargaining Negotiations

8. On November 1, 2019, the NCCC, which represents a number of large and small carriers including Union Pacific, served a "Section 6 notice" on SMART-TD, which began a new round of national handling. (ECF No. 24-1 at pg. 10).

9. At issue were changes to wages, health and welfare benefits, and certain work rules. Union Pacific, through the NCCC, sought changes pertaining to these topics, but also extended an “invitation” to SMART-TD to bargain over changes to “crew consist” agreements. (Leonard Decl. at ¶14).

10. Put simply, crew consist agreements establish a required minimum number of employees working in the conductor craft to work on a train crew. (Leonard Decl. at ¶13).

11. SMART-TD declined the carriers’ invitation to negotiate crew consist in national handling and instead those negotiations proceeded to local handling. (Leonard Decl. at ¶14).

12. After nearly three years of bargaining and following mediation by the National Mediation Board, the parties failed to come to terms on a national agreement. Pursuant to 45 U.S.C. § 155(c), the parties were released from mediation by the National Mediation Board on June 17, 2022. (ECF No. 24-1 at pg. 10).

Presidential Emergency Board No. 250

13. Thereafter, the parties prepared to engage in self-help with the Section 6 bargaining process exhausted. In order to prevent economic disruption, President Biden invoked his authority under 49 U.S.C. § 160 to appoint Presidential Emergency Board 250 (“PEB 250”). (ECF No. 24-1 at pgs. 10-11).

14. The creation of PEB 250 forbade the parties from engaging in self-help for a period of 30 days, to allow it to “investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.” 45 U.S.C. § 160. Under this process, the parties to the dispute present their respective proposals to the board, which then issues a report and recommendation that is non-binding on the parties, but serves as a pathway for future negotiations to occur. (ECF No. 24-1).

15. The parties presented numerous proposals before PEB 250. SMART-TD sought more predictable work schedules because many conductors work schedules with no assigned time off. (ECF No. 24-1 at pg. 91).

16. Union Pacific and other carriers represented by the NCCC sought to modernize the job bidding process of their employees by instituting “automated bid scheduling.” (ECF No. 24-1 at pgs. 87-88). Under this proposal, the employer maintains a system of all job assignments and all job bidding, and electronically assigns employees to those jobs. (*Id.*). In addition to the changes to the actual bidding process, the carriers sought changes to how vacancies are filled when a job assignment is vacant, meaning no employee is assigned to it at that time. (*Id.* at pgs. 88-89).

17. Additionally, the carriers sought more reliance on the use of “pools” instead of “extra boards.” (ECF No. 24-1 at pgs. 88-89).

18. “Pools” are a roster of employees who work an assignment and function on a first-in, first-out basis as job assignments arise. (Edington Decl. at ¶5). “Extra boards” are a list of employees who are available to fill an assignment where no employee is assigned. (*Id.* at ¶6).

19. In addition to the above, the carriers sought a conclusion to local handling of crew consist negotiations. (ECF No. 24-1 at pg. 43). Specifically, rather than the Section 6 process required by the RLA for negotiating changes to agreements, the carriers requested that PEB 250 recommend binding arbitration if the parties were unable to reach new agreements, which is in direct contrast to the Section 6 process which does not require mandatory arbitration to resolve negotiations. (*Id.*); 45 U.S.C. § 160.

20. With respect to the union's proposal regarding work/rest cycles and the carrier's proposal regarding automated bidding and pool/extra board regulation, PEB 250's Report and Recommendation stated:

"We remand for further negotiation both the Carriers' requests regarding automated bidding and scheduling, self-supporting pools, pool regulations, and extra boards, and those of the BLET and SMART-TD relative to the issues of scheduling (including the scheduling of scheduled days off for unassigned road service). If no agreement can be reached, those disputes are to proceed to binding arbitration. The Board hopes that this may prove to be a "win-win" in which the Carriers obtain a more efficient and reliable system for manning the locomotives, with both operational benefits and cost savings, and employees will obtain preferred schedules with more control over their personal lives when not otherwise scheduled."

(ECF No. 24-1 at pgs. 36-37). Accordingly, PEB 250 recommended that the proposals be subject to further negotiation, with an arbitration backstop to follow if unsuccessful. (*Id.*).

21. With respect to the local handling of crew consist, PEB 250 declined to recommend the Carriers' request for an arbitration backstop. (ECF No. 24-1 at pg. 44).

22. PEB 250 recognized that crew consist negotiations are a matter of local handling, and that "no persuasive basis has been shown to supplant the customary RLA process." (ECF No. 24-1 at pg. 44). Under this process, PEB 250 noted, crew consist negotiations were in active mediation by the NMB, and it is the NMB that has the sole authority to release the parties from negotiations. (*Id.*). As PEB 250 put it, "[n]o reason exists for this Board to make a recommendation that would alter the statutory process by mandating binding arbitration." (*Id.*). Accordingly, PEB 250 recommended that the carriers withdraw their request for an arbitration backstop for local handling of crew consist. (*Id.*).

Collective Bargaining Negotiations After PEB 250

23. SMART-TD and the NCCC began negotiations based on the Report and Recommendations of PEB 250. This resulted in a tentative agreement that delayed any threat of

self-help pending a ratification vote by SMART-TD members. Articles V, VI, and VII of the tentative agreement addressed the issues of scheduled days off, automated bidding, and pool/extra board regulation. (ECF No. 24-2 at pgs. 8-13).

24. Article V addressed scheduled days off, and referred the matter to local handling by allowing any general committee of adjustment to serve a Section 6 notice on a carrier “to establish rules creating voluntary assigned days off in thru freight road service.” (ECF No. 24-2 at pg. 8). Following service of the notice, the carrier could respond with its own notice establishing such rules. (*Id.*). Per the agreement, the parties then had a minimum of 180 days to negotiate, following which, either party could submit the matter to final and binding arbitration. (*Id.* at pgs. 8-9).

25. Articles VI and VII addressed “automated bid scheduling” and “pools and extra board” regulation, respectively. (ECF No. 24-2 at pgs. 9-13).

26. Similar to Article V, Articles VI and VII referred the matters to local handling by allowing carriers to serve Section 6 notices “of its intent to implement some or all of the items below and, in doing so, may identify any carrier-specific implementation matters that it believes must be addressed in connection with such implementation.” (ECF No. 24-2 at pgs. 9;11). The union could then respond “with its own list of carrier-specific implementation issues that it believes must likewise be addressed.” (*Id.*). Like Article V, the negotiations over the items in Articles VI and VII were subject to an 180-day period, after which either party could move the matter to arbitration. (*Id.* at pgs. 10-12).

27. The tentative agreement failed the ratification vote by SMART-TD members, leaving the parties again on the precipice of self-help. (ECF No. 22-24 at pgs. 2-3). In response

to the threat, Public Law 117-216 was enacted by Congress and the President on December 2, 2022, which imposed the terms of the rejected tentative agreement on the parties. (*Id.*).

Local Handling of Crew Consist Agreements

28. Local handling and crew consist was not part of the tentative agreement that was imposed on the parties. (Leonard Decl. at ¶18).

29. The local handling of crew consist process resulted in voluntary local agreements between Union Pacific and three SMART-TD general committees of adjustment dated June 7, 2023, November 4, 2024, and June 3, 2025, which definitively resolved any changes to existing crew consist agreements. (Leonard Decl. at ¶18).

30. The crew consist agreements that arose from local handling made no changes to long-standing language that prohibited any “Carrier supervisor, official, or non-craft employees (including yardmasters) [from being] used to supplant or substitute in the exclusive work of any train or yard crew working under [SMART-TD]... Agreements.” ((Leonard Decl. at ¶¶13;16).

Articles V, VI, and VII Negotiations.

31. SMART-TD served its Section 6 notice with respect to Article V on December 28, 2023. (Edington Decl. at ¶9)

32. Union Pacific served its notices on Articles VI and VII on January 15, 2024. ((Edington Decl. at ¶10).

33. The parties thereafter engaged in negotiations over their respective proposals, but were unfortunately unable to reach a voluntary agreement. ((Edington Decl. at ¶11).

Arbitration Proceedings of Articles V, VI, and VII

34. On September 16, 2024, the parties entered into an agreement to arbitrate pursuant to 49 U.S.C. § 157 and 158 of the RLA. (ECF No. 24-5 at pg. 2, ¶1).

35. The agreement to arbitrate established Special Board of Adjustment 1208 (“the Board”), which consisted of three members: a union representative member, a carrier representative member, and a neutral member. (ECF No. 24-5 at pg. 2, ¶2).

36. SMART-TD’s member was International Vice President Gary Crest, while Union Pacific’s member was Vice President of Labor Relations Maqui Parkerson. (ECF No. 24-5 at pg. 2, ¶2). The parties subsequently agreed on neutral member Earlene Baggett-Hayes. (ECF No. 24-16 at pg. 2).

37. Articles V, VI, and VII’s plain terms established that an arbitrator’s jurisdiction was “whether and how the rules referenced in this Article will be implemented.” (ECF No. 24-2 at pgs. 8;10;12). Similarly, the agreement to arbitrate limited the scope of the Board’s jurisdiction to “only [those] changes necessary to implement the rules referenced in Article V, VI, and VII of the National Agreement.” (ECF No. 24-5 at pg. 2, ¶1).

38. The parties exchanged written opening submissions on January 2, 2025, which consisted of their respective proposals and supporting reasoning regarding the rules referenced in Articles V, VI, and VII. (ECF Nos. 24-6;24-7).

39. Rebuttal submissions were submitted on January 13, 2025. (ECF Nos. 24-8;24-9).

40. Following submissions, a live arbitration hearing was held from January 21-23, 2025, in Phoenix, Arizona. (ECF No. 24-16 at pg. 3).

41. A primary issue at arbitration was what work/rest cycle would employees work under in order to meet the mandate of Article V with respect to scheduled rest days. Such cycles require an employee to work or be available for work for a certain amount of days, followed by a certain number of rest days before the cycle begins again. (ECF No. 24-16 at pg. 5).

42. With respect to scheduled rest for extra board employees, SMART-TD advocated for a work/rest cycle of five days working or available for work followed by two voluntary days off. (ECF No. 24-6 at pgs. 89-91).

43. By contrast, Union Pacific proposed so-called “Smart Rest” for extra board employees, which requires an employee to work five consecutive days before receiving one day off. (ECF No. 24-7 at pgs. 20;39).

44. Under Smart Rest, an employee does not know when they will get a day off work because if an employee is available for work but is not called, the “clock” resets resulting in a lack of predictability when it comes to scheduling. (Edington Decl. at ¶13).

45. In addition to the Smart Rest proposal, Union Pacific further sought the inclusion of an agreement provision with respect to extra board employees that “[i]f no crew is available due to observance of rest days or lay-offs, a qualified employee may be used to perform service.” (ECF No. 24-7 at pg. 39).

46. SMART-TD sought to maintain the status quo regarding so-called “extra rest” provisions in existing agreements. (ECF No. 24-6 at pg. 26). Extra rest simply allows employees performing road service to observe additional time off between assignments at their option when they have worked a pre-determined number of hours. (Edington Decl. at ¶14).

47. Union Pacific made no proposed changes to the observance of extra rest in its opening submission, rebuttal, or at the hearing. Indeed, during the hearing, Union Pacific Director of Labor Relations Jennifer Powell stated unequivocally that Union Pacific was not seeking the elimination of extra rest provisions stating, “[t]hat is not what our proposal is talking about... we don’t propose to eliminate that provision.” (ECF No. 24-17 at pgs. 3-4).

48. During arbitration, SMART-TD sought the inclusion of agreement language that would provide employees with certain additional pay and time off opportunities. (ECF No. 24-13 at pg. 2).

49. In response to SMART-TD's proposals regarding additional pay and time off opportunities, Union Pacific argued such were outside the scope of the Board's authority because those items were not mentioned in Articles V-VII, and were just a rehashing of requests SMART-TD made to PEB 250 that were rejected. (ECF No. 24-7 at pg. 46).

50. Specifically, Union Pacific argued, "[t]he language of the 2022 National Agreement provides no basis to impose changes in matters that are not mentioned in Articles V, VI, and VII..." (ECF No. 24-7 at pg. 46). Union Pacific argued that these were items that SMART-TD argued in favor of before PEB 250, but that "[PEB 250] rejected those requests" and "[h]aving done so, it makes no sense to suggest that the Board nevertheless allowed the union to obtain those changes through the process provided under Article V, VI, and VII, all of which address different and limited subjects." (*Id.*).

51. SMART-TD advocated for a broader view of the Board's authority, arguing that voluntary agreements entered into on other railroads regarding the implementations of Articles V, VI, and VII contained similar terms to what it was proposing. (ECF No. 24-6 at pgs. 68-70). In support, SMART-TD stated, "[t]he affected employees received an improved quality of life and compensation through various provisions, resulting in an equitable *quid pro quo* between the parties." (*Id.* at pg. 69); (ECF No. 24-8 at pgs. 27-28).

52. On March 17, 2025, Neutral Baggett-Hayes issued her Preliminary Findings and Order to provide Post-Hearing Submissions ("Preliminary Findings"). (ECF No. 24-13).

53. The Preliminary Findings established, “[t]he Board’s jurisdiction is limited in scope to items that are legitimately before it,” and further found that “[t]he Board lacks jurisdiction over a number of the specified Union requests.” (ECF no. 24-13 at pg. 2).

54. The Preliminary Findings then listed requests by SMART-TD that were within the scope of the Board’s jurisdiction and further identified certain SMART-TD requests that it deemed outside the Board’s jurisdiction, stating, “the Board is not authorized to rule on these matters that are outside of its jurisdictional scope.” (*Id.*).

55. After issuing her findings with respect to the Board’s jurisdiction, Neutral Baggett-Hayes ordered that the parties submit post-hearing submissions with best and final offers within 60 days. (ECF No. 24-13 at pg. 3). In addition to narrowing the scope of proposals argued previously, she ordered that the best and final offers “may not exceed parameters or topics already presented and argued.” (*Id.*).

56. The parties submitted their respective best and final offers on May 13, 2025. (ECF No. 24-16 at pg. 6).

57. Union Pacific retained its proposal regarding the use of any qualified employee to perform service, despite the fact that changes to crew consist were not before the Board. (ECF No. 24-15 at pg. 18). As justification, Union Pacific stated, “[i]n response to the Organization’s objections at arbitration, the Carrier has tailored its proposal to require a separate evaluation prior to each job that the Carrier cannot fill because of a lack of available personnel.” (*Id.*).

58. In an attempt to downplay the change, Union Pacific stated, “the use of this provision will be limited to extraordinary and necessary circumstances” and in a conclusive fashion stated that such changes “would not violate any crew consist provisions.” (ECF No. 24-15 at pg. 18).

59. Union Pacific also proposed for the first time to eliminate extra rest unless SMART-TD chose to keep the provision in place in lieu of employees receiving a work/rest schedule. (ECF No. 24-15 at pg. 7).

60. This proposal had not been submitted to the Board in any fashion prior to its inclusion in Union Pacific's post-hearing submission in contradiction to Neutral Baggett-Hayes' Interim Findings that limited proposals to those already presented and argued. Indeed, as explained previously, Union Pacific explicitly stated during prior proceedings that it was not seeking the elimination of extra rest at all. (ECF No. 24-17 at pgs. 3-4).

61. Union Pacific maintained its proposal regarding the application of Smart Rest to extra board employees. (ECF No. 24-15 at pgs. 7-9). In support, it argued that to impose any other model would require Union Pacific to maintain more employees on extra boards, which would result in higher costs unless it was willing to risk an inability to service customers. (*Id.*).

The Award

62. On August 5, 2025, Neutral Baggett-Hayes transmitted the Award to the parties. (ECF No. 24-16 at pg. 2).

63. The Award adopted the proposed language from Union Pacific that allows it to protect service by using "any qualified employee in limited circumstances that could result in unavoidable harm to the customer." (ECF No. 24-16 at pg. 10). As authority to do so, Neutral Baggett-Hayes stated that she "acknowledges [SMART-TD's] vehement opposition to this provision, but appreciates [the] Carrier's need to protect service in the face of period of extraordinary unavailability." (*Id.*). Neutral Baggett-Hayes explained that "[t]he intent of the provision is to provide narrowly tailored relief to the Carrier in limited circumstances." (*Id.*).

64. The Award provided pool employees with a 6/2 work rest model, which requires said employees to be available for six consecutive days, after which they are entitled to two optional days off. (ECF No. 24-16 at pg. 6).

65. The Award adopted Union Pacific's proposal applying Smart Rest to extra board employees, which does not provide assigned rest days. (ECF No. 24-16 at pgs. 6-7). As justification, Neutral Baggett-Hayes stated she was adopting Smart Rest "[in] order to balance the additional costs associated with a 6/2 work-rest model" that had been adopted for pool employees. (*Id.* at pg. 6).

66. The Award adopted Union Pacific's proposal to eliminate extra rest despite previously asserting it was not seeking to do so during arbitration proceedings. (ECF No. 24-16 at pg. 13, Art. V.D.).

The Parties' Request for Interpretation of the Award

67. On September 17, 2025, the parties submitted three questions for interpretation regarding the Award. (ECF No. 24-18 at pg. 3).

68. The parties asked for the definition of "qualified employee" with respect to Article VII.E of the Award, which permits Union Pacific to use any qualified employee to perform work as a conductor. (*Id.*). In response, Neutral Baggett-Hayes explained, "[a] qualified employee is any employee who meets the requirements of the job, whether it is the skills level, certification(s), and/or experience," and she further stated "[t]he Award does not differentiate between Union and non-Union employees in Article VII.E when it refers to 'a qualified employee.'" (*Id.*).

SMART-TD's Dissent to the Award

69. SMART-TD Board Member Gary Crest issued a dissent, disagreeing with numerous aspects of the Award. (ECF No. 24-17).

70. The dissent first objected to the failure of the Award to provide assigned rest days to road extra boards by instead imposing Smart Rest, “which requires an employee to obtain five consecutive RSIA starts before becoming eligible for a 24-hour rest period, effectively creat[ing] a system with no assigned off days, in contravention of Article V of Public Law No. 117-216.” (*Id.* at pg. 3).

71. The dissent challenged the Award’s elimination of extra rest provisions in existing agreements, citing Union Pacific Director of Labor Relations Jennifer Powell’s testimony during the hearing that it was not seeking to eliminate extra rest. (ECF No. 24-17 at pgs. 3-4).

72. The dissent objected to the Award’s grant of authority to Union Pacific to use any qualified employee to perform work that exclusively belongs to conductors. (ECF No. 24-17 at pgs. 5-7). In support, SMART-TD submitted excerpts from nine existing crew consist agreements that contain some variation of a prohibition preventing any “Carrier supervisor, official, or non-craft employees” to “supplant or substitute in the exclusive work of any train or yard crew working under [SMART-TD] Agreements.” (*Id.*). The dissent pointed out that “nowhere in Articles V-VII is it contemplated that a carrier would be permitted to use non-craft employees in such a manner.” (*Id.* at pg. 7).

Present Proceedings

73. On December 19, 2025, Union Pacific filed the Award in this Court pursuant to 45 U.S.C. 159 First, in Case No. 8:25-mc-00548 (D. Neb.).

74. On December 29, 2025, SMART-TD filed its Complaint seeking impeachment of the Award pursuant to 45 U.S.C. § 159. (ECF No. 1).

Respectfully submitted,

s/Shawn M. McKinley

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