

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

INTERNATIONAL ASSOCIATION OF
SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS,
TRANSPORTATION DIVISION,

Petitioner,

V.

UNION PACIFIC RAILROAD
COMPANY,

Defendant.

**PLAINTIFF SMART-TD'S BRIEF IN SUPPORT
OF ITS MOTION FOR SUMMARY JUDGMENT**

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Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, Plaintiff, the International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (“SMART-TD”), by and through the undersigned, states as follows in support of its Motion for Summary Judgment.

INTRODUCTION

The issue in dispute here is whether Special Board of Adjustment No. 1208 (“the Board”), an arbitration board established pursuant to Section 7 of the Railway Labor Act (“RLA”), 45 U.S.C. § 157, failed to conform or confine itself to the scope of the agreement to arbitrate that led to its creation in violation of Section 9 of the RLA, 45 U.S.C. § 159. SMART-TD argues that it did, and the resultant arbitration award (“Award”) must be impeached.

As explained below, the arbitration at issue was the result of a lengthy and contentious labor dispute that resulted in a collective bargaining agreement imposed on SMART-TD and Union Pacific Railroad Company (“Union Pacific”) by Congress and the President in 2022.¹ From that agreement, certain matters were left unresolved and the parties were obligated to negotiate terms or submit the matter to arbitration. Unfortunately, the parties were unable to reach an agreement, leading to the arbitration and Award at issue here.

The authority of the Board with respect to this matter is well-settled, with the neutral mediator finding that the Board could only issue an award addressing items that were legitimately before it. SMART-TD does not challenge the scope of the Board’s jurisdiction or the

¹ SMART-TD is a labor organization representing employees in the transportation industry, including freight and passenger railroad conductors. (Statement of Material Facts Exhibit A, Declaration of Brent Leonard at ¶3). Union Pacific Railroad Company is a railroad or a “carrier” as defined in the Railway Labor Act, 45 U.S.C. § 151 First, and employs, among other crafts, conductors represented by SMART-TD. (*Id.* at ¶4). 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. (*Id.* at ¶5)

neutral mediator's findings regarding the same. Rather, the below demonstrates that the Board failed to act within the scope of the jurisdiction in three ways, resulting in an Award that does not conform nor confine itself to the scope of the agreement to arbitrate, rendering it impeachable under the RLA.

First, the arbitration board amended existing crew consist agreements that were not properly before the Board. Indeed, the issue of crew consist was subject to a distinct dispute resolution process under Section 6 of the RLA, 45 U.S.C. § 160. In violation of the parties' agreement to arbitrate, the Board nonetheless granted Union Pacific a significant concession by altering the parties' crew consist agreements to allow it to use non-SMART-TD represented employees to perform conductor duties. Second, the Board failed to act within the scope of the agreement to arbitrate by imposing a work schedule on certain employees that were outside its jurisdiction. The result is the imposition of collective bargaining agreement language that runs afoul of the parties' agreement to arbitrate. Third, the Board eliminated an agreement provision in direct contradiction to its own findings regarding the scope of the arbitration, rendering the Award impeachable.

The matters described below have a substantial impact on the working lives of thousands of conductors represented by SMART-TD. The Board's errors warrant a finding that its failure to confine itself to the agreement to arbitrate renders the Award invalid, and thus impeachable under Section 9 of the RLA. For the reasons stated herein, SMART-TD respectfully requests that such an order be entered.

FACTUAL BACKGROUND

A. The 2019 Round of National Handling.

The Award at issue here is the end result of the lengthy “national handling” process that began on November 1, 2019. 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. (Statement of Material Facts Exhibit (“Ex.”) A, Declaration of Brent Leonard (“Leonard Decl.”) at ¶6). In national handling, railroads typically bargain together in a coalition through their representative, the National Carriers’ Conference Committee (“NCCC”). (*Id.* at ¶5). Carriers are not required to participate in the coalition and may instead bargain independently. (*Id.*). On the other side in national handling, railroad unions typically form bargaining committees comprised of various union officers who then bargain with the Carriers’ chosen representative. (*Id.*). Sometimes, like carriers, different unions will bargain together in a coalition in national handling. (*Id.*). The resulting agreements from this process are referred to as “national agreements.” (*Id.*).

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.² (*Id.* at 11). Certain topics are strictly limited to local handling as a matter

² Many railroads comprise of a number of smaller, defunct railroads that have been acquired over time. (Leonard Decl. at ¶10). General committees of adjustment typically have jurisdiction over the negotiation and enforcement of agreements that cover the territory of a defunct railroad that remains in effect under the larger, current railroad. (*Id.*).

of law and cannot be pursued in national handling absent the express agreement of both parties. See *Alton & Southern Ry. Co. v. Bhd. of Maintenance of Way Employes*, 883 F.Supp. 755, 760-61 (D.D.C. 1995) (“[w]hether [national handling] is obligatory will depend on an issue-by-issue evaluation of the practical appropriateness of mass bargaining on that point and of the historical experience in handling any similar national movements.”) (quoting *Atlantic Coast Line R.R. Co. v. Bhd. of R.R. Trainmen*, 262 F.Supp. 177, 187 (D.D.C. 1967)).

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.³ (ECF No. 24-1 at pg. 10). 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). Put simply, these agreements establish a required minimum number of employees working in the conductor craft to work on a train crew. (*Id.*) The negotiation of crew consist agreements is subject to local handling as a matter of law, and cannot be discussed in national handling absent the express agreement of both parties. *Atlantic Coast Line, supra*. Here, the parties proceeded to national handling over their respective notices, but SMART-TD declined the carriers’ invitation to negotiate crew consist in national handling and instead those negotiations proceeded to local handling.⁴ (Leonard Decl. at ¶14).

³ The term “Section 6 notice” derives from Section 6 of the RLA, which governs the negotiation of collective bargaining agreements. 45 U.S.C. § 160.

⁴ The history regarding these negotiations cannot be described fully herein and are not relevant to the question before this Court, instead it suffices to say that the parties began bargaining crew consist locally, where such negotiations were not barred by existing agreements.

After nearly three years of bargaining and following mediation by the National Mediation Board (“NMB”), 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). 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”). (*Id.* at pgs. 10-11). The invocation of this process forbade the parties from engaging in self-help for a period of 30 days, to allow PEB 250 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.

B. Proceedings Before and Report and Recommendation of PEB 250.

The parties presented numerous proposals before PEB 250. Of import here, SMART-TD sought more predictable work schedules. (ECF No. 24-1 at pg. 91). Many conductors work schedules with no assigned time off. For example, a conductor may work six consecutive days with different starting times each day, or they may work one day and then not be called for an assignment the next day though they are available for work. (Statement of Material Facts Exhibit Ex. B, Declaration of Luke Edington (“Edington Decl.”) at ¶7). Then the next day they may or may not be called into work though they are available as the cycle continues. (*Id.*). Importantly, an employee who has made his or herself available for work on any given day must be ready to report to their assignment within one-and-one-half or two hours, depending on location, of being

notified by Union Pacific or face potential discipline. (*Id.* at ¶ 8). This of course creates a highly unpredictable schedule where employees cannot know in advance when they may be off work.

On the other hand, 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 job assignment is staffed when it is currently “vacant,” meaning no employee is assigned to it at that time. (*Id.* at pgs. 88-89). Additionally, the carriers sought more reliance on the use of “pools” instead of “extra boards.” (*Id.*). Put simply, “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).

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.

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.*).

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). In doing so, it 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.” (*Id.*). 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.*).

C. Follow-Up National Handling Based on PEB 250’s Report and Recommendations.

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. Pertinent here, 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). Specifically, 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.” (*Id.* 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).

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

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.*). The effect of the law was that the terms of the tentative agreement became a new national agreement and the 2019 round of national handling was thus concluded with the tentative agreement imposed on the parties.

D. Ongoing Local Handling of Crew Consist Agreements.

As PEB 250 did not adopt the NCCC’s proposal regarding an arbitration backstop with respect to crew consist negotiations, the parties continued such negotiations in local handling and

crew consist was not part of the tentative agreement that was imposed on the parties. (Leonard Decl. at ¶18). This 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. (*Id.*). Importantly, these agreements 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 UTU⁵... Agreements.”⁶ (*Id.* at ¶¶13;16).

E. Local Handling of Articles V, VI, and VII.

With the tentative agreement imposed on the parties, SMART-TD served its Section 6 notice with respect to Article V on December 28, 2023. (Edington Decl. at ¶9) Union Pacific served its notices on Articles VI and VII on January 15, 2024. (*Id.* at ¶10). The parties then engaged in negotiations over their respective proposals, but were unfortunately unable to reach a voluntary agreement. (*Id.* at ¶11). Accordingly, 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).

F. Establishment of Special Board of Adjustment 1208.

The agreement to arbitrate established Special Board of Adjustment 1208 (“the Board”), which consisted of three members: a union representative member, a carrier representative

⁵ “UTU” stands for the United Transportation Union, which merged with the Sheet Metal Workers International Association in 2011, forming the International Association of Sheet Metal, Air, Rail and Transportation Workers (“SMART”). The Transportation Division of SMART is the successor of the UTU. (Leonard Decl. at ¶17).

⁶ The same or substantially similar language is contained within at least nine crew consist agreements between Union Pacific and various SMART-TD General Committees of Adjustment. (ECF No. 24-17 at pgs. 5-7).

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

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). Rebuttal submissions were submitted on January 13, 2025. (ECF Nos. 24-8;24-9). Following submissions, a live arbitration hearing was held from January 21-23, 2025, in Phoenix, Arizona. (ECF No. 24-16 at pg. 3).

G. The Parties' Proposals to the Board.

In their written submissions and during the live hearing, the parties' proposals were broad-ranging and diverged drastically from each other. Accordingly, the summation contained herein is limited to those relevant to the matter before the Court. Of import here, a primary issue 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). The parties exchanged proposals regarding cycles for pool employees and, separately, extra board employees.

With respect to scheduled rest for extra board employees,⁷ 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). 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). 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 the predictability that is present in SMART-TD’s proposal. (Edington Decl. at ¶13). 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.” (*Id.* at pg. 39).

In addition to the work/rest cycles proposed above, 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). For its part, 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).

⁷ The parties submitted divergent requests with respect to pool employees, but the Award’s findings with regard to that matter are not challenged here and are thus not discussed.

H. The Parties' Dispute Over the Scope of Arbitration.

The scope of the arbitration became a hotly contested issue during the proceedings. As stated previously, the agreement to arbitrate limited the scope of the Board's jurisdiction to "only over 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). 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). In response, Union Pacific argued vigorously these proposals were outside the scope of the Board's authority. The core of its argument was that 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. 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.*).

By contrast, 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).

I. Preliminary Findings and Order to Provide Post-Hearing Submissions.

On March 17, 2025, Neutral Baggett-Hayes issued her Preliminary Findings and Order to provide Post-Hearing Submissions (“Preliminary Findings”). (ECF No. 24-13). In this order, Neutral Baggett-Hayes found: “[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). The order 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.*). Notably, in finding that the scope of the matter before the Board was narrower than SMART-TD had argued, Neutral Baggett-Hayes failed to apply the same reasoning to proposals by Union Pacific that were outside the Board’s jurisdiction.

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.*).

J. The Parties Post-Hearing Submissions Following the Preliminary Findings.

The parties submitted their respective best and final offers on May 13, 2025. (ECF No. 24-16 at pg. 6). Relevant here, 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.*). Finally, 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.” (*Id.*).

Further, Union Pacific 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). 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).

Finally, 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.*).

K. The Award.

On August 5, 2025, Neutral Baggett-Hayes transmitted the Award to the parties. While the Award is broad-reaching, of note were certain concessions it provided to Union Pacific. First, 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.*). While Neutral Baggett-Hayes explained that "[t]he intent of the provision is to provide narrowly tailored relief to the Carrier in limited circumstances," the result is an inexplicable alteration to the parties' existing crew consist agreements, which were not before the Board. (*Id.*).

Additionally, 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). However, the Award adopted Union Pacific's proposal applying Smart Rest to extra board employees, which does not provide assigned rest days. (*Id.* 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).

Finally, 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.). It was not until after Neutral Baggett-Hayes Preliminary Findings that Union Pacific sought this change, despite her clear circumscription of the parties' best and final offers to not include any proposals that had not been introduced previously.

L. Questions for Interpretation Submitted by the Parties.

On September 17, 2025, the parties submitted three questions for interpretation regarding the Award. (ECF No. 24-18 at pg. 3). Pertinent here, 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.*). Accordingly, the Award’s terms as clarified by the interpretation allow any employee, even potentially management, to perform the work of a conductor, amending the parties’ crew consist agreements that explicitly prohibit such a practice.⁸

M. SMART-TD’s Dissent to the Award.

SMART-TD Board Member Gary Crest issued a dissent, disagreeing with numerous aspects of the Award. (ECF No. 24-17). Pertinent here, 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 RSIA⁹ 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). Further, 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. (*Id.* at pgs. 3-4). Lastly, 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. (*Id.* 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

⁸ Additionally, the parties asked whether the Award eliminated extra rest provisions on pools and extra boards on the Eastern District, which was answered in the affirmative. (ECF No. 24-18 at pg. 3).

⁹ “RSIA” refers to 49 U.S.C. § 21103(a), which establishes mandatory rest for railroad employees and is discussed in further detail herein.

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).

N. The Present Situation.

With the arbitration process completed, 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.). On December 29, 2025, SMART-TD filed its Complaint seeking impeachment of the Award pursuant to 45 U.S.C. § 159. (ECF No. 1). The basis for impeachment is discussed in more detail below, but put briefly, the Board failed to conform with the stipulations of the agreement to arbitrate by: (1) altering the parties’ existing crew consist agreements; (2) failing to provide extra board employees with scheduled rest; and (3) eliminating extra rest provisions from agreements after the jurisdiction of the Board was narrowed to exclude such a proposal.

LEGAL STANDARD

A. Federal Rule of Civil Procedure 56.

Under Federal Rule of Civil Procedure 56, summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a). “The movant ‘bears the initial responsibility of informing the district court of the basis for its motion,’ and must identify ‘those portions of [the record] ... which it believes demonstrate the absence of a genuine issue of material fact.’” *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). “If the movant does so, the nonmovant must respond by submitting evidentiary materials that set out “specific facts showing that there is a genuine issue for trial.” *Id.* “Where the record taken as a whole could not lead a

rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” *Ricci v. Destefano*, 557 U.S. 557, 586 (2009).

B. Impeachment of Arbitration Award Under Section 9 of the RLA.

Under Section 9 of the RLA, an arbitration award which results from Section 7 arbitration “shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration... unless, within ten days after the filing of the award, a petition to impeach the award... shall be filed in the clerk’s office of the court in which the award has been filed...” 45 U.S.C. § 159 Second. An award may be impeached only upon three limited grounds. 45 U.S.C. § 159 Third. Relevant here, an award may be impeached where it “does not conform, nor confine itself, to the stipulations of the agreement to arbitrate.” 45 U.S.C. § 159 Third(b). Where a court “determine[s] that a part of the award is invalid on some ground or grounds... but shall determine that a part of the award is valid, the court shall set aside the entire award” unless the parties agree that the “valid and invalid parts are separable.” 45 U.S.C. § 159 Fourth. In such a case, “the court shall set aside the invalid part, and order judgment to stand as to the valid part.” *Id.*

“The determination of whether or not the Board exceeded its authority in making the Award must be made by reference to the four corners of the instrument constituting the agreement between the parties.” *Gibbons v. United Transp. Union*, 462 F.Supp. 838, 844 (N.D. Ill. 1978) (citing *Nat’l Maritime Union of Am. v. Federal Barge Lines, Inc.*, 304 F.Supp. 256, 258 (E.D. Mo. 1969)). “It is common ground that an arbitrator may decide only those questions posed in the submission agreement of the parties.” *Maine Central R.R. Co. v. Bhd. of Maintenance of Way Workers*, 663 F.Supp. 425, 429 (D. Me. 1987). Under a Section 7 arbitration, the board has “considerable discretion in interpreting any ambiguities in the

arbitration agreement.” *Southern Pacific Transp. Co. v. United Transp. Union*, 789 F.Supp. 9, 13 (D.D.C. 1992) (citing *United Paperworkers v. Misco*, 484 U.S. 29 (1987)). It is broadly accepted that the scope of review of an arbitration award pursuant to the RLA is “among the narrowest known to law.” *Southern Pacific Transp. Co. v. United Transp. Union*, 789 F.Supp. 9, 13 (D.D.C. 1992) (citing *Maine Central R.R. Co. v. Bhd. of Maintenance of Way Workers*, 873 F.2d 425, 428 (1st Cir. 1989)). Importantly, “an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice.” *Alvey, Inc. v. Teamsters Local Union No. 688*, 132 F.3d 1209, 1213 (8th Cir. 1997) (quoting *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)).

ARGUMENT

The Award “does not conform, nor confine itself, to the stipulations of the agreement to arbitrate” in three ways. First, by amending the parties’ crew consist agreements, the Board acted outside the scope of its jurisdiction because the matter of crew consist was not before the Board to consider. Rather, the issue of crew consist was explicitly removed from national handling by PEB 250, and subsequently, the parties in the National Agreement. Nonetheless, the Board altered the parties’ crew consist agreements by allowing “any qualified employee” to perform conductor duties. Further, the Award imposes a work schedule on extra board employees that directly contradicts the requirements of Article V to provide scheduled days off. Instead, the Board imposed a work schedule that provides no predictability and is entirely subject to the needs of Union Pacific in violation of Article V. Finally, the Board improperly eliminated extra provisions from existing agreements despite disallowing such a proposal from being introduced in the late stages of arbitration. As explained in detail below, these errors constitute sufficient grounds for impeaching the Award and setting it aside.

A. The Board Exceeded Its Authority by Altering the Parties' Crew Consist Agreements.

The Board improperly amended the parties' longstanding crew consist agreements by allowing "any qualified employee" to perform work that exclusively belongs to conductors represented by SMART-TD. In doing so, the Board went well outside the scope of the agreement to arbitrate, as crew consist was not before the Board in any manner.

Longstanding crew consist agreements between SMART-TD and Union Pacific contain identical or similar language expressly prohibiting "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" (ECF No. 24-17 at pgs. 5-7); (Leonard Decl. ¶16). Notwithstanding such, the Award includes a provision in Article VII.E, which states:

"Without prejudice to either party' position regarding the ability of the Carrier to take appropriate actions to protect service during periods of extraordinary unavailability, if the Carrier is unable to fill an assignment due to lack of rested and available personnel and the blanking of such assignment would result in unavoidable harm to the customer, a qualified employee may be used without penalty to perform such service upon providing notice to the General Chairperson. The Carrier will evaluate the need to exercise its rights under this provision on an assignment-by-assignment basis."

(ECF No. 24-16 at pg. 17, Art. VII.E). When asked to clarify the meaning of "any qualified employee," Neutral Baggett-Hayes confirmed that such meant, "[a] qualified employee is any employee who meets the requirements of the job, whether it is the skills level, certification(s), and/or experience," further stating, "[t]he Award does not differentiate between Union and non-Union employees in Article VII.E when it refers to 'a qualified employee.'" (ECF No. 24-18 at pg. 3).

The effect of Article VII.E is an amendment to the crew consist agreements' blanket prohibition on the use of "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" by adding an exception where "the Carrier is unable to fill an assignment due to lack of rested and available personnel, the blanking of such assignment would result in unavoidable harm to the customer." This is unequivocally an amendment of crew consist agreements, which were not before the Board.

The scope of arbitration was well-settled during the proceedings. The agreement to arbitrate limited the Board's jurisdiction to "only over 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). At arbitration, Union Pacific argued for a narrow interpretation of the Board's jurisdiction, stating, "[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. 2407 at pg. 46). Neutral Baggett-Hayes agreed and found that a number of SMART-TD's proposals were outside the scope of the Board's jurisdiction, stating such "is limited in scope to items that are legitimately before it..." (ECF No. 24-13 at pg. 2). However, over SMART-TD's objections, Neutral Baggett-Hayes failed to apply that reasoning to Union Pacific's proposal regarding crew consist.

Article VII of the National Agreement makes no mention of crew consist, nor does it even obliquely reference the ability of a carrier to provide service with management personnel in the event there are no conductors available.¹⁰ This is not an accident. The issue of crew consist was not before the Board. This is because PEB 250 refused to recommend the NCCC's proposal to provide an arbitration backstop in crew consist negotiations. Rather, PEB 250 stated, "[n]o

¹⁰ Neither do Articles V or VI, but the Award places the disputed provision under Article VII.

reason exists for this Board to make a recommendation that would alter the statutory process by mandating binding arbitration.” (ECF No. 24-1 at pg. 44). Accordingly, the National Agreement that arose following PEB 250’s Report and Recommendation does not address crew consist whatsoever. Instead, local handling of crew consist continued under the Section 6 process of the RLA as recommended by PEB 250 and resulted in negotiated agreements that made no alteration to the prohibition against 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 ¶16); (ECF Nos. 24-19;24-20;24-21).

It is well-settled that where “an arbitrator issues an award that does not ‘draw its essence from the contract,’ because it reflects instead the arbitrator’s ‘own notions of industrial justice,’” a court may vacate the award. *Alcan Packaging Co. v. Graphic Communication Conf., Int’l Bhd. of Teamsters & Local No. 77*, 729 F.3d 839, 841 (8th Cir. 2013) (quoting *Enterprise Wheel*, 363 U.S. at 599). Here, despite that the issue was not before it, the Board granted Union Pacific changes to the governing crew consist agreements through arbitration, precisely what PEB 250 declined to recommend. In doing so, the Board “acknowledge[d] the Organization’s vehement opposition to this provision, but appreciate[d] the Carrier’s need to protect service in the face of periods of extreme unavailability.” (ECF No. 24-16 at pg. 10). No reference was made to any authority contained within Article VII for such a change, because there is none. Rather, the Board was dispensing its own brand of industrial justice because it was concerned with Union Pacific’s ability to provide service, which was simply not before the Board. If Union Pacific wanted to alter the parties’ crew consist agreements in such a manner it was free to seek such during local handling of the matter, which was the appropriate forum, not here.

PEB 250 rejected the NCCC's request for an arbitration backstop. As Union Pacific argued during arbitration proceedings, where PEB 250 has rejected a proposal, "it makes no sense to suggest that the Board nevertheless allowed the [party] to obtain those changes through the process provided under Article V, VI, and VII, all of which address different and limited subjects." (ECF No. 24-7 at pg. 46). The Award's alteration to crew consist was outside the subjects of Article VII. By doing so, the Board exceeded its authority and dispensed its own brand of industrial justice while ignoring the language of Article VII, the agreement of the parties to arbitrate, and its own findings with respect to jurisdiction in its Preliminary Findings. Accordingly, the Award should be vacated.

B. The Assignment of Smart Rest Violates Article V By Imposing a Work Schedule That Does Not Allow for Scheduled Time Off.

The Award does not grant extra board employees assigned or scheduled days off. As explained below, it instead grants extra board employees time off conditioned on Union Pacific's needs of service. The result is a scheduling system that leaves extra board employees with no predictability in scheduling where time off is entirely subject to factors outside of their control. Articles V, VI, and VII of the National Agreement conferred the Board with jurisdiction to determine "whether and how to implement the rules referenced" in Articles V, VI and VII of the National Agreement. (ECF No. 24-2 at pgs. 8;10;12). By imposing a new work/rest cycle on extra board employees that only grants days off conditioned on Union Pacific's needs, the Award "does not conform, nor confine itself, to the stipulations of the agreement to arbitrate." 45 U.S.C. § 159 Third(b).

Federal law sets hours of service requirements for railroad employees. Under this legislative scheme, where a railroad "employee has initiated an on-duty period each day for [six] consecutive days..." they are required to have "at least 48 consecutive hours off duty at the

employee's home terminal" before returning to work. 49 U.S.C. § 21103(a)(4)(A). In application, once an employee works six consecutive days, they are entitled to two days off. However, having time off subject only to when a railroad calls an employee to work creates severe unpredictability. For example, an employee may work three consecutive days and be ready and available for work day four, but instead they are not called and their rest resets.¹¹ Such a system allows for no ability plan family events such as a child's birthday or an anniversary, or schedule medical appointments or any type of activity that would interfere with their ability to be able to report to work immediately. It was to address this issue that SMART-TD sought to establish scheduled rest for employees.

Article V of the National Agreement is entitled "Scheduled Days Off" and allows "[a]ny General Committee seeking to establish rules creating voluntary assigned days off in thru freight road service" to "serve a written Notice on the Carrier of its desire to establish voluntary assigned days off agreement rules." (ECF No. 24-2 at pg. 8). This notice was to "specify the rules the Union proposes to establish the and the conditions, if any, which it proposes shall govern the establishment of such rules." (*Id.*). In response, the Carrier was entitled to "respond with its own Notice specifying the rules that the Carrier proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such rules." (*Id.*). When remanding the issues that formed Articles V-VII, PEB 250 noted that the three subjects of those Articles were "intertwined with the subject of flexibility, efficiency, certainity, and fairness of work schedules, including (but not limited to) the subject of scheduled days off..." (ECF No. 24-1 at pg. 87) (emphasis added).

¹¹ Importantly, an employee who is available for work must be able to report to their on-duty location within one-and-a-half to two hours of receiving notice that they are needed for work. (Edington Decl. at ¶8).

The Award recognizes that Article V of the National Agreement was adopted by the parties in the National Agreement “for the benefit of [SMART-TD].” (ECF No. 24-16 at pg. 6). In so recognizing, the Award established a 6/2 work-rest model for pool employees, creating a rule where if employees work or are available to work for six consecutive days, they will receive two consecutive days off after. (*Id.*). While this was not the proposal SMART-TD advocated for, it is undisputed that the Board acted within its authority in imposing this model on pool employees, as it provides employees with scheduled rest where they make themselves available for work, permitting them to know with certainty when they will have time off.

In contrast to pool employees, extra board employees were awarded Smart Rest. (ECF No. 24-16 at pgs. 6-7). Under this model, an employee must work five consecutive days before having the option to observe a rest day. (Edington Decl at ¶¶12-13). If the employee is available for work but is not called on any given day, the clock resets, and the employee must start over to work five consecutive days before obtaining a voluntary rest day opportunity. (*Id.*). This is substantially similar to existing federal law that led to the creation of Article V. Under both systems, if an employee is available for work but is not called, the clock restarts, and the employee must start over to reach the requisite number of days worked before having a day off when they know they are not on call and can attend to personal matters. This is not scheduled rest. It does not provide employees with any scheduling predictability. Rather, it functions substantially similarly to the unacceptable federal standards that led to the creation of Article V.

The jurisdiction of the Board was limited to “whether and how to implement the rules referenced in Articles V, VI and VII” of the National Agreement. (ECF No. 24-2 at pgs. 8;10;12). The agreement to arbitrate echoed the same, conferring the Board with jurisdiction “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). The Board was certainly free to decline to impose scheduled rest on extra board employees under its authority, and indeed SMART-TD advocated for the same. But once it decided to impose a schedule, it was not within the Board’s authority to do so in such a fashion that fails to provide scheduled rest as outlined in Article V. Accordingly, the Award fails to confine itself to the scope of the agreement to arbitrate, and should be impeached.

C. The Elimination of Extra Rest Was Outside the Board’s Authority.

The Award eliminates extra rest provisions that exist in certain agreements between Union Pacific and SMART-TD. As explained previously, extra rest is a quality-of-life provision that 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. (Edginton Decl. at ¶14). During arbitration, SMART-TD raised the issue of retaining extra rest, where it existed in applicable agreements. (ECF No. 24-6 at pg. 26). At no point during written submissions and the subsequent hearing did Union Pacific state that it was seeking the elimination of extra rest provisions. Rather, during the hearing when the issue of extra rest was raised, Union Pacific Director of Labor Relations Jennifer Powell unequivocally stated, “[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).

Following the hearing, the Board’s Preliminary Findings ordered the parties to submit best and final offers with supportive reasoning. In doing so, Neutral Baggett-Hayes narrowed the

scope of the board’s jurisdiction by requiring that these offers “may not exceed parameters or topics already presented and argued.”¹² (ECF No. 24-13 at pg. 3).

In its best and final offer, Union Pacific for the first time argued for the elimination of existing extra rest provisions. (ECF No. 24-15 at pg. 7). In doing so, Union Pacific sought to provide “the Organization with a one-time option to preserve any fatigue mitigation program or provisions that allow employees to extend, add, or observe extra rest in lieu of implementing the default work-rest schedule. (*Id.*). This meant that SMART-TD could either elect to keep the extra rest provisions, or forfeit the ability to obtain a work-rest schedule if it chose to do so. This was never presented previously, and Union Pacific provided no justification for why it was doing so for the first time in violation of the Board’s Preliminary Findings.

The Award did not directly adopt Union Pacific’s proposal regarding extra rest. Rather, it disregarded the proposed exchange of extra rest for a work-rest schedule and simply eliminated all extra rest provisions. (ECF No. 24-16 at pg. 13, Art. V.D.). The Board provided no justification for why it was doing so in violation of its jurisdictional scope in adopting a proposal that had not been submitted to it before. In doing so, the Board exceeded its authority as agreed to by the parties. Accordingly, the Award should be impeached.

¹² While the Board arguably lacked the authority to narrow its jurisdiction to proposals already presented and argued, neither party objected and thus acquiesced to the Board’s defined parameters. *See, e.g., Holtec Int’l Corp. v. Michigan State Utility Workers Council*, 160 F.4th 723, 729 (6th Cir. 2025) (an objection to the jurisdiction of an arbitrator is waived as much as any other procedural objection).

CONCLUSION

For the aforementioned reasons, SMART-TD respectfully requests that the Court find the Board failed to conform or confine itself to the stipulations of the agreement to arbitrate and impeach the Award.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 11, 2026, the accompanying brief was filed using the Court's Electronic Case Filing system, which sent notice to all attorneys of record in the matter.

/s/Shawn McKinley
Shawn McKinley

CERTIFICATE OF COMPLIANCE

In accordance with Local Rule 56(d)(1), the undersigned certifies that the submitted brief contains a word count of 8,625 words.

/s/Shawn McKinley
Shawn McKinley