

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA
OMAHA DIVISION**

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

Petitioner,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Case No. 8:25-cv-00740

DEFENDANT’S STATEMENT OF MATERIAL FACTS

In support of its Motion for Summary Judgment, Defendant Union Pacific Railroad Company hereby submits this Statement of Material Facts.

The Parties

1. Union Pacific Railroad Company (“Union Pacific”) operates one of the largest freight rail networks in the United States, spanning more than 30,000 miles of track across 23 states. (Dkt. No. 24-10 (Day 1 Hearing Tr.) 42:5-12.) It is a “carrier” within the meaning of the Railway Labor Act, 45 U.S.C. § 151 First. (Dkt. No. 1 (Compl.) ¶ 6; Dkt. No. 10 (Answer) ¶ 6.)

2. The International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (“SMART-TD”) represents the trainpersons working for Union Pacific. (Dkt. No. 1 (Compl.) ¶ 4; Dkt. No. 10 (Answer) ¶ 4.) SMART-TD is a “representative” within the meaning of the Railway Labor Act, 45 U.S.C. § 151 Sixth. (Dkt. No. 1 (Compl.) ¶ 4; Dkt. No. 10 (Answer) ¶ 4.)

Venue & Jurisdiction

3. SMART-TD brings this action pursuant to Section 9 Third of the Railway Labor Act, 45 U.S.C. § 159 Third, petitioning the Court to review and set aside an interest arbitration award. (Dkt. No. 1 (Compl.) ¶ 1; Dkt. No. 10 (Answer) ¶ 1.)

4. The parties agree that this Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 1337(a) over SMART-TD's claims insofar as this case presents federal questions arising under the Railway Labor Act. (Dkt. No. 1 (Compl.) ¶¶ 1-2; Dkt. No. 10 (Answer) ¶¶ 1-2.)

5. The Arbitration Award that SMART-TD asks this Court to vacate was filed in the U.S. District Court for the District of Nebraska of December 19, 2025. (Dkt. No. 1 (Compl.) ¶ 3; Dkt. No. 10 (Answer) ¶ 3.) The parties agree that venue is proper in this Court. (*See id.*; *see also* 45 U.S.C. § 159 Second).)

Train Operations

6. Trainpersons do not all hold the same job; some work in assigned service whereas others work in unassigned service. (*See* Dkt. No. 24-10 (Day 1 Hearing Tr.) 43:12-46:2.)

7. Employees in assigned service – such as those working yard or local jobs – have a set schedule; they have fixed reporting times and assigned days off. (Dkt. No. 24-10 (Day 1 Hearing Tr.) 44:20-45:3.)

8. Employees in unassigned service – such as those working in through-freight pools – do not have a set schedule; they work on-call. (*Id.* 45:6-46:11.)

9. Union Pacific primarily uses pools to staff trains operating between terminals (*i.e.*, through-freight service). (*Id.* 45:6-46:15.)

10. Employees assigned to a pool are listed in a particular order dictated by collective bargaining agreements and, as trains are ready to depart, they are called to work in that order.

(*Id.* 48:20-50:25.)

11. After being called to work, the crew operates the train from the home terminal to an away-from-home terminal at which the crew typically ties-up, rests for at least 10 hours in accordance with federal law, and awaits a call to operate a train back to the home terminal. (*Id.* 48:20-50:25, 52:3-8.)

12. Employees assigned to pools are generally on-call 24/7, unless marked off or on rest. *See id.* 45:15-16 (“Our through freight crews are 24/7, 365. We are moving trains every single day of the week.”), 46:8-11, 52:3-8.)

13. Trainpersons can mark off for various reasons, including vacation, personal leave, sick leave, and for personal business. (*See id.* 46:17-25.)

14. Mark-offs create vacancies that must be filled. (*See id.*)

15. Union Pacific maintains extra boards to help fill vacancies created when employees mark off. (*See id.* 46:20-47:2.)

16. Like employees assigned to a pool, employees assigned to an extra board are listed in a particular order and called to work in that order as vacancies arise. (*Id.* 49:16-21, 51:9-20.)

17. Extra boards protect vacancies in both assigned service – yard or local jobs with set schedules – and unassigned service. (*Id.* 46:20-25, 51:12-14.)

2020 National Bargaining Round and PEB 250

18. Collective bargaining in the railroad industry is governed by the Railway Labor Act and occurs between representatives of both parties. (Dkt. No. 1 (Compl.) ¶ 7; Dkt. No. 10 (Answer) ¶ 7.)

19. In addition to bargaining some agreements locally or at the system-wide level, the parties historically have bargained nationally over wages, benefits, and work rules. (Dkt. No. 1 (Compl.) ¶¶ 9-11; Dkt. No. 10 (Answer) ¶¶ 9-11.)

20. In late 2019, the National Carriers' Conference Committee—bargaining on behalf of Union Pacific and other major railroads—served a Section 6 notice on SMART-TD addressing wages, benefits, and work-rule changes, and SMART-TD served its own notice shortly thereafter. (Dkt. No. 24-7 at 94–105 (NCCC Section 6 Notice) & 106–117 (SMART-TD Section 6 Notice).)

21. The Carriers' work-rule proposals included establishing “self-supporting” pools; instituting an automated bidding system to award jobs; and changing the manner in which pools and extra boards are regulated. (*See, e.g.*, Dkt. No. 24-7 at 103-04 (NCCC Section 6 Notice to SMART-TD); Dkt. No. 24-7 at 118–28 (Oct. 1, 2020 Bargaining Proposal from NCCC to CBC); Dkt. No. 24-7 at 133–36 (July 11, 2022 Comprehensive Proposal from NCCC to Rail Labor Unions).)

22. The work rule changes sought by the Carriers were intended in part to improve efficiency and better satisfy customer demands in a modern age. (*See* Dkt. No. 24-7 at 103–04 (NCCC Section 6 Notice); Dkt. No. 24-7 at 133 & 135 (July 11, 2022 Comprehensive Proposal from NCCC to Rail Labor Unions).)

23. SMART-TD made various proposals of its own, including a proposal that employees in “unassigned road service” – such as those working in through-freight pools –

receive voluntary scheduled days off, the specifics of which would be determined through local negotiations. (*See* Dkt. No. 24-7 at 138 (Rail Unions’ Joint Proposal Before PEB 250), BLET & SMART-TD Proposal 2.)

24. After extensive bargaining, followed by an unsuccessful mediation, the parties were unable to reach a voluntary agreement. (Dkt. No. 1 (Compl.) ¶¶ 17-19, 28; Dkt. No. 10 (Answer) ¶¶ 17-19, 28.)

25. As a result, to prevent the possibility of a national rail shutdown, President Biden appointed Presidential Emergency Board No. 250 to investigate and recommend a resolution. (Dkt. No. 1 (Compl.) ¶¶ 30-32; Dkt. No. 10 (Answer) ¶¶ 30-32.)

26. PEB 250 held five days of hearings and issued its report shortly thereafter. (Dkt. No. 1 (Compl.) ¶¶ 38-39; Dkt. No. 10 (Answer) ¶¶ 38-39.)

27. The Board sent the scheduling, assignment, and staffing issues back to the parties for further bargaining, recommending that, if the parties still could not agree, those issues be resolved through final and binding interest arbitration. (*See* Dkt. No. 24-1 (PEB 250 Report and Recommendations) at 35–36, 86–91.)

28. The Board expressed hope that this approach would produce a “win-win”: carriers would get a more efficient staffing system, and employees would get more predictable schedules and greater control over their time off. (*See id.*)

29. That framework was ultimately incorporated into Articles V, VI, and VII of the 2022 National Agreement between SMART-TD and the major railroads. (Dkt. No. 24-2 (2022 National Agreement) at 8–13.)

30. Although the parties reached a tentative agreement, SMART-TD’s membership did not ratify it. (Dkt. No. 1 (Compl.) ¶¶ 43-45; Dkt. No. 10 (Answer) ¶¶ 43-45.)

31. Congress then enacted Public Law No. 117-216, which imposed the 2022 Agreement's terms by statute. (Dkt. No. 1 (Compl.) ¶ 45; Dkt. No. 10 (Answer) ¶ 45; Dkt. No. 24-22 (PL 117-216).)

32. Article V of the 2022 National Agreement permits a General Committee seeking voluntary assigned days off in through-freight road service – including extra boards that protect through-freight road service – to serve written notice identifying proposed rules; the Carrier may respond with its own proposals. (Dkt. No. 24-2 (2022 National Agreement) at 8.)

33. Under Article V, if the parties cannot reach agreement within 180 days, either party may submit the matter to final and binding interest arbitration, and the arbitration board has jurisdiction to determine “whether and how the rules referenced in this Article will be implemented.” (*Id.*)

34. Article VI of the 2022 National Agreement addresses automated bid scheduling—the process by which employees submit preferences and are assigned to positions through a standing-bid process based on seniority, qualifications, and other rules. (*Id.* at 9–11.)

35. Under Article VI, if the parties cannot reach agreement within 180 days, either party may submit the matter to final and binding interest arbitration, and the arbitration board has jurisdiction to determine “whether and how the rules referenced in this Article will be implemented.” (*Id.* at 9.)

36. Article VII of the 2022 National Agreement, which addresses pools and extra boards, provides for self-supporting pools,¹ replaces mileage-based pool regulation with start-

¹ A self-supporting pool is one in which vacancies within the pool are filled in the first instance by the next available, rested employee in the pool – to the extent anyone fits that criteria – rather than by someone on the extra board. (Dkt. No. 24-7 (Day 1 Hearing Tr.) 63:6-23.)

based regulation, and gives the Carrier authority to establish, abolish, or combine extra boards based on service needs. (*Id.* at 11–13; *see also* Dkt. No. 24-7 (Day 1 Hearing Tr.) 89:22-92:17.)

37. Article VII also provides that, in conjunction with the adoption of self-supporting pools and/or changes to the way in which pools and extra boards are regulated, new agreements will provide for one or more of the “[w]orkforce predictability and flexibility” measures described in Article VII: (a) the “[o]ppportunity for employees to observe rest outside the requirements of the Rail Safety Improvement Act”; (b) “[a] procedure under which employees may trade assignments”; and/or (c) “[a] procedure under which employees may receive a pre-arranged lay-off.” (Dkt. No. 24-2 (2022 National Agreement) at 12.)

38. Under Article VII, if the parties cannot reach agreement within 180 days, either party may submit the matter to final and binding interest arbitration, and the arbitration board has jurisdiction to determine “whether and how the rules referenced in this Article will be implemented.” (*Id.* at 12.)

Negotiation and Arbitration Proceedings

39. Following Congress’s enactment of Public Law No. 117-216, imposing by law the terms of the parties’ tentative agreement, the parties commenced the negotiations the statute contemplated. (*See* Dkt. No. 1 (Compl.) ¶¶ 54-56; Dkt. No. 10 (Answer) ¶¶ 54-56.)

40. SMART-TD served its notice seeking voluntary assigned days off; Union Pacific served its notices seeking automated bid scheduling and the new pool-and-extra-board framework. (Dkt. No. 24-3 (SMART-TD Art. V Notice to Union Pacific); Dkt. No. 24-4 (Union Pacific Art. VI & Art. VII Notice).)

41. The parties negotiated, but did not reach agreement. (Dkt. No. 1 (Compl.) ¶¶ 56-57; Dkt. No. 10 (Answer) ¶¶ 56-57.)

42. In July 2024, SMART-TD invoked arbitration under Articles V, VI, and VII (Dkt. No. 24-6 at 118 (July 25, 2024 Request for Arbitration)), and a few months later the parties signed a written Agreement to Arbitrate establishing Special Board of Adjustment No. 1208 under Sections 7 and 8 of the RLA. (Dkt. No. 24-5 (Sept. 16, 2024 Arbitration Agreement).)

43. The Board consisted of three members: Maqui Parkerson (Carrier Member), Gary Crest (Union Member and SMART-TD Vice President), and Earlene R. Baggett-Hayes (Neutral Arbitrator and Board Chair). (*See id.*; Dkt. No. 1 (Compl.) ¶ 59; Dkt. No. 10 (Answer) ¶ 59.)

44. The Agreement to Arbitrate limited the Board to “changes necessary to implement the rules referenced in Articles V, VI and VII of the National Agreement,” and the National Agreement granted the Board “jurisdiction to determine whether and how the rules referenced in [those Articles] will be implemented.” (Dkt. No. 24-5 (Sept. 16, 2024 Arbitration Agreement); Dkt. No. 24-2 (2022 National Agreement) at 8, 9, 11.)

45. The parties fully briefed the case and participated in a three-day evidentiary hearing in January 2025. (Dkt. No. 24-16 (Arbitration Award) at 2–3; Dkt. No. 24-7 (Carrier’s Opening Submission); Dkt. No. 24-6 (SMART-TD’s Opening Submission); Dkt. No. 24-9 (Carrier’s Reply Submission); Dkt. No. 24-8 (SMART-TD’s Reply Submission).)

46. Two months later, the Neutral issued a Preliminary Order addressing the Board’s jurisdiction. (Dkt. No. 24-13 (Mar. 17, 2025 Preliminary Findings and Order).)

47. The Preliminary Order excluded several SMART-TD proposals—such as additional pay, leave, and allowances—as outside the Board’s authority, identified three categories within scope (scheduled rest, self-supporting pools, and prearranged layoffs), and directed the parties to submit best-and-final proposals limited to topics and issues already presented. (*Id.*)

48. In May 2025, both parties submitted best-and-final proposals accompanied by post-hearing briefs. (Dkt. No. 24-15 (Carrier’s Post-Hearing Submission); Dkt. No. 24-14 (SMART-TD’s Post-Hearing Submission).)

49. SMART-TD’s proposal included a 6/3 work/rest schedule for pools (meaning that employees would work or be available for 6 days before then having 3 days off) and a 5/2 work/rest schedule for road extra boards (meaning that employees would work or be available for 5 days before then having 2 days off). (Dkt. No. 24-14 (Union’s Post-Hearing Submission) at 29 (Art. V.A & Art. V.D).)

50. Union Pacific’s proposal included a 4/1 work/rest schedule for pools and “voluntary smart rest” for road extra boards. (Dkt. No. 24-15 (Carrier’s Post-Hearing Submission) at 18 (Art. V.A.A. & Art. V.B.1); *see also id.* at 4–7 (explaining voluntary rest proposals).)

51. Federal law requires employees who make six consecutive starts to rest for 48 hours. (49 U.S.C. § 21103(a)(4)(A).)

52. Smart rest allows an employee, after working 5 consecutive starts, to take 24 hours of rest upon tie-up after the fifth start if the employee so chooses. (*See* Dkt. No. 24-15 (Carrier’s Post-Hearing Submission) at 18 (Art. V.B.1); *see also id.* at 5–7 (explaining voluntary smart rest proposal).)

53. Union Pacific’s proposal included substantially more time off for employees – voluntary rest days for those in through-freight service and a doubling of the percentage of employees allowed to take pre-arranged lay-offs on any given day. (*See id.* at 18 (Art. V.A.A, Art. V.B.1) & 24 (Art. VII.D.1); *see also id.* at 4–7 (explaining voluntary rest proposals), 15–16 (explaining proposal to increase percentage of pre-arranged layoffs allowable).)

54. To ensure that these measures did not adversely affect customer service, Union Pacific also proposed that, in certain limited circumstances, any “qualified employee” could be used to perform service. ((*Id.* at 25 (Art. VII.E); *see also id.* at 16 (explaining rationale for “qualified employee” provision).)

55. Rules in place in some locations on Union Pacific’s system allowed employees to take “extra rest” under some circumstances. (Dkt. No. 24-6 at 119 (Extra Rest Rule); Dkt. No. 24-12 (Hearing Tr. Day 3) 36:1-4.)

56. In its best-and-final proposal, Union Pacific proposed that “[a]ny existing pools or extra boards that have existing fatigue mitigation programs and/or provisions in place providing for extending, additional, or extra rest . . . will be eliminated.” (Dkt. No. 24-15 (Carrier’s Post-Hearing Submission) at 19 (Art. V.D).)

57. In its opening submission, SMART-TD argued that “[e]liminating any extra rest provisions currently in place would have a tremendously negative impact on employee’s quality of life.” (Dkt. No. 24-6 (Union’s Opening Submission) at 25.)

58. Prior to its best-and-final proposal, Union Pacific had made proposals on how to integrate the new rest rules with pre-existing ones. (*See, e.g.*, Dkt. No. 24-7 at 86 (Carrier’s Proposed Agreement Terms), Art. V.A.1, Note 3 (calling for elimination of “turn rest” provisions); *see also* Dkt. No. 24-12 (Day 3 Hearing Tr.) 37:5-38:8.)

The Award and Clarification

59. In August 2025, the Board issued its Award. (Dkt. No. 24-16 (Arbitration Award).)

60. The majority opinion, authored by the Neutral, addressed each Article in turn—identifying the disputed issues, summarizing the parties’ positions, and explaining the Board’s resolution. (*Id.*)

61. The Union dissented to the Award. (Dkt. No. 24-17.)

62. With respect to Article V, the Award adopted a 6/2 work/rest schedule for pool freight boards: six days worked (or available), followed by two voluntary rest days. (Dkt. No. 24-16 (Arbitration Award) at 5, 11 (Art. V.A.A.).)

63. The Board rejected the Carrier’s proposed 4/1 model on the ground that 6/2 “better supports the objective of providing a better quality of life for employees.” (*Id.* at 5.)

64. Under Article V, the Award also adopted “Smart Rest” for road and combination extra boards, providing that an employee “may activate voluntary undisturbed rest (24 total hours between consecutive trips) upon tie up to break consecutive RSIA starts² at their home terminal after working five (5) consecutive trips/tours of duty.” (*Id.* at 5–6, 11 (Art. V.B.1.); *see also* Dkt. No. 24-10 (Day 1 Hearing Tr.) 174:3-16.)

65. The Board explained that Smart Rest was adopted “[i]n order to balance additional costs associated with a 6/2 work-rest model,” and that Smart Rest, in the Board’s view, “is consistent with the workability and quid pro quo mandates of the Board.” (Dkt. No. 24-16 (Arb. Award) at 5.)

66. Employees who are not working five consecutive starts are, by definition, getting at least 24 hours off at some point between starts. (*See* Dkt. No. 24-15 (Carrier’s Post-Hearing Submission) at 6 n.3.)

² A “start” refers to when an employee is called to work. *See* Ex. __ (Hearing Tr.) 92:15-17.

67. While mandating new voluntary rest days, the Award eliminated certain pre-existing rest provisions: “turn rest” and “extra rest.” (Dkt. No. 24-16 (Arb. Award) at 12 (Art. V.D.).)

68. Under Article VI, the Award implemented a system-wide “standing bid” framework based on seniority, qualifications, and job preferences. (*Id.* at 6–7.)

69. The Award adopted uniform assignment and displacement procedures, eliminated inconsistent legacy rules, rejected portions of the Carrier’s vacancy procedures, modified the furlough-recall provision, and harmonized bid procedures across the system. (*See id.*)

70. Under Article VII, the Award implemented self-supporting pools and authorized the Carrier to establish, abolish, or combine extra boards based on service needs. (*Id.* at 7–9.)

71. The Award also implemented the start-based pool regulation framework contemplated by Article VII. (*Id.* at 7–9.)

72. In addition to granting voluntary rest days, the Award doubled the pre-arranged lay-off threshold – the percentage of employees at each location who could be off on vacation or personal leave at any given time. (*See id.* at 9 & Art. VII.D.1.)

73. The Award states that, “In order to protect the Carrier’s ability to provide service, the final Award adopts the Carrier’s proposed language that allows it to protect service by using any qualified employee in limited circumstances that could result in unavoidable harm to the customer.” (*See id.* at 9.)

74. The provisions referenced by the Board states:

Without prejudice to either party’s 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.

(*Id.* at 17 (Art. VII.E).)

75. The Board retained jurisdiction for sixty days to permit clarification. (*Id.* at 10.)

76. During that window, the parties submitted three interpretation questions, and in September 2025 the Neutral issued written responses. (Dkt. No. 24-18 (Board’s Responses to Interpretation Questions).)

77. Those questions and answers included the following (*id.*):

Q1. Does Article V.D eliminate extra rest provisions on pools and extra boards on the Eastern District?

Answer: Yes.

...

Q3. What is the definition of “a qualified employee” in Article VII.E?

Answer: A qualified employee is any employee who meets the requirements of the job, whether it is the skills level, certification(s), training, and/or experience. Note regarding Question #3: The Award does not differentiate between Union and non-Union employees in Article VII.E when it refers to “a qualified employee.” It is anticipated that through the implementation phase and the Questions and Answers, the parties will discuss and agree upon terms consistent with the specific conditions set out in Article VII.E of the Award.

78. SMART-TD objected to the “qualified employee” provision during the arbitration proceedings, but not on jurisdictional grounds. (Dkt. No. 24-11 (Day 2 Hearing Tr.) 35:22-36:21.)

79. SMART-TD objected to Union Pacific’s “Smart Rest” proposal during the arbitration proceedings, but not on jurisdictional grounds. (Dkt. No. 24-8 (Union’s Reply Submission) at 14, 27–29.)

80. During the arbitration proceedings, SMART-TD argued that the Board should not eliminate extra rest provisions, but never challenged the Board's authority to do so. (Dkt. No. 24-7 (Union's Opening Submission) at 25, 59–60.)

Dated: August 11, 2026

Respectfully,

s/ Scott P. Moore
Scott P. Moore
NE Bar No. 20752
Attorney for Defendant
BAIRD HOLM LLP
1700 Farnam St., Suite 1500
Omaha, NE 68102
Telephone: (402) 636-8268
Fax: (402) 344-0588
E-mail: spmoore@bairdholm.com

s/ Donald J. Munro
Donald J. Munro
(Pro Hac Vice)
DC Bar No. 453600
Attorney for Defendant
JONES DAY
51 Louisiana Avenue NW
Washington, DC 20001
Telephone: (202) 879-3922
Fax: (202) 626-1700
E-mail: dmunro@jonesday.com

Thomas R. Chiavetta
(Pro Hac Vice)
DC Bar No. 985370
Attorney for Defendant
JONES DAY
51 Louisiana Avenue NW
Washington, DC 20001
Telephone: (202) 879-3975
Fax: 1.202.626.1700
E-mail: tchiavetta@jonesday.com

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will serve all counsel of record.

s/ Thomas R. Chiavetta