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UNITED STATES OF AMERICA
NATIONAL MEDIATION BOARD

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In The Matter Of: :
Application of the UNITED :
TRANSPORTATION UNION alleging a : File No. CR-6624
representation dispute pursuant :
to Section 2, Ninth of the Railway :
Labor Act, as amended involving :
employees of UNION PACIFIC RAILROAD :
COMPANY :

- - - - -x
National Mediation Board
East Tower
1301 K Street, N.W.
Room 250 East
Washington, D.C.

Thursday, July 8, 1999

The above-entitled matter came on for hearing, before the
Honorable Benetta M. Mansfield, Senior Hearing Officer, assisted by
Richard Hanusz, Mediator, pursuant to notice, at 9:00 a.m.

BEFORE:

BENETTA M. MANSFIELD, Senior Hearing Officer

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P R O C E E D I N G S

[9:00 a.m.]

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2
3 HEARING OFFICER MANSFIELD: On the record. This is a
4 continuation of the hearing in CR-6624, Union Pacific Railroad.

5 The UTU is still putting on its case. Mr. Miller, you can
6 call your next witness.

7 MR. MILLER: UTU would call John Babler.

8 Whereupon,

9 JOHN W. BABLER,

10 a witness, was called for examination by counsel for the United
11 Transportation Union and, having been first duly sworn, was examined and
12 testified as follows:

D I R E C T E X A M I N A T I O N

13
14 BY MR. MILLER:

15 Q Mr. Babler, would you please state your name and address for
16 the record.

17 A That's John W. Babler. My address is 719 Meadow Lane,
18 Palatine, Illinois.

19 Q Mr. Babler, it's my understanding that on June 28 of 1970
20 you were hired by the former Chicago and North Western Transportation
21 Company, or CNW, at Appleton, Wisconsin. Correct?

22 A That is correct.

23 Q And you were hired as a trainman.

24 A That is correct.

25 Q And that you became qualified as a conductor on the CNW in

1 September of 1970.

2 A That is correct.

3 Q And you became qualified as a fireman for CNW in March of
4 1980.

5 A That's correct.

6 Q And you became a qualified engineer of CNW in May of 1981.

7 A That is correct.

8 Q For the period June of 1970 through August of 1970, you
9 worked at or around Appleton, Wisconsin. Correct?

10 A Yes.

11 Q And from August of 1970 through August of 1977, you worked
12 out of Fond du Lac, Wisconsin.

13 A Yes.

14 Q And from August of 1977 through May of 1980, you worked out
15 of Madison, Wisconsin.

16 A Yes.

17 Q And from May of 1980 until the present, you worked out of
18 Chicago, Illinois.

19 A That's correct.

20 Q And the Chicago and North Western merged with the Union
21 Pacific Railroad Company in about 1995.

22 A That's correct, Mr. Miller.

23 Q My understanding as to your union offices is that you held
24 the office of local chairman from March of 1981 through August of 1998.
25 Correct?

1 A Yes.

2 Q But that with -- and that you were in 1987 from January to
3 July a general chairman. Correct?

4 A Yes, I represented the UTUE.

5 Q All right. So your general chairmanship was with respect
6 during that period to the representation of UTU engine service
7 employees. Correct?

8 A That is correct.

9 Q And that you were -- and that in about July of 1987 your
10 UTUE committee merged with another general committee of UTU. Correct?

11 A Yes, it did.

12 Q And at that time, from July of 1987 through August of 1998,
13 you were the vice general chairman of that combined committee.

14 A Yes, I was.

15 Q And that after the retirement of the previous general
16 chairman in August of 1998, you were elected as the general chairman of
17 the entire committee.

18 A That is correct.

19 Q I'd like you to describe briefly the movements that you were
20 required to make with respect to your employment from the time that you
21 were qualified as an engineer in May of 1981, and specifically with
22 respect to how often you worked as an engineer or how often you had to
23 move back to your previous classification.

24 A During that time I was primarily a fireman assigned to
25 suburban service in Chicago. When the Engineers Extra Board would be

1 exhausted, sometimes it would be a couple times a month, sometimes
2 several times a month, I'd work as a locomotive engineer.

3 We had what was called the manning agreement, and there was
4 a 14-day formula, and every year around the holidays we would suffer a
5 decline in business which would result in the furlough of firemen. At
6 that time I used my seniority, went back to the trainmen's ranks. While
7 I was a trainman, it wouldn't be unusual to work as an engineer or a
8 fireman.

9 I normally went to pool service assignments, so I was on
10 call. It was consistent with my trainman's seniority. I'd a lot of
11 times show up at work and I'd find out that there was a conductor and
12 two brakemen already there. I'd call the crew management center or at
13 that time the proviso crew caller and say what's the deal. We're out of
14 engineers. You're the engineer today. So I'd make a round trip as an
15 engineer.

16 This would happen quite often, because when the CNW had the
17 right to furlough, they were very aggressive in doing it. So they would
18 cut the Engineers Board tight and in turn they would cut the Firemen's
19 Board tight so they were short of employees in engine service and they
20 were using about -- usually when they would furlough, they'd furlough
21 about 10 or 12 of us, and they basically put us on the bubble, and we
22 picked up all the work when the extra boards were exhausted.

23 Q Now you have had experience as general chairman of both the
24 UTUE committee and the full general committee that represents trainmen
25 and conductors as well, have you not?

1 A Yes.

2 Q And since serving in those offices, what has been your
3 experience since 1985 when ground service employees became the source of
4 supply for engineers on the CNW and then later the Union Pacific with
5 respect to what movements you have noticed of conductors who become
6 qualified as engineers?

7 A It became kind of a single line of progression at that point
8 in time where when the Engineers Extra Board would be exhausted, the
9 carrier would reach down into the conductor ranks, and depending on
10 usually the crew caller they would either call the senior demoted man,
11 which would be the conductor or the conductor first out that was
12 engineer qualified, and they would temporarily use him that day or that
13 trip as a locomotive engineer.

14 We had the problem considerably in what was called our
15 Powder River Basin, the coal field where we have an ongoing manpower
16 problem.

17 Q And has that remained true since the merger of the former
18 CNW with the Union Pacific in 1995?

19 A I would say it has increased if anything else because we
20 have had considerable manpower shortages as a result of service
21 meltdowns.

22 Q You were a part-time General Committee officer until August
23 of 1998, correct?

24 A That's correct.

25 Q And so until then you were actually working on the railroad,

1 correct?

2 A That's correct. I normally worked for the railroad five
3 days a week at that time.

4 Q I am going to put before you what has been previously
5 admitted at UTU Exhibit 8-J, and I ask you if you recognize that as
6 excerpts from the Union Pacific operating rules.

7 A Yes. It's commonly referred to as the General Code of
8 Operating Rules.

9 Q In terms of your practical experience in operating on train
10 crews up until August of 1998 when you became full-time union, what is
11 your experience in the application of those rules as to the
12 responsibilities of a conductor and the responsibilities of an engineer?

13 A These rules apply to both the engineer and conductor
14 equally.

15 Q Are there joint responsibilities of both the engineer and
16 the conductor under those rules?

17 A Yes, there are.

18 Q Are you familiar as an employee with the application of what
19 has become known as the incidental work rule that became part of the UTU
20 and BLE national agreements in 1985 and 1986?

21 A It's commonly referred to as Article 8. Yes, I am.

22 Q Would you describe the operation of that incidental work
23 rule with respect to the functions of an engineer and an conductor on a
24 reduced crew?

25 A Essentially what it's done is taken our five and six man

1 crews as a result of crew consist which are now two man crews, a
2 conductor and an engineer, and it's heaped the operation of the train
3 somewhat equally on each one of those individuals.

4 An example would be historically the engineer wouldn't get
5 down and throw a switch. Now if the conductor is out of position or
6 back doing his work and a switch needs to be throwing, the engineer gets
7 down and throws the switch.

8 Basically, when you inspect a passing train, that's a
9 responsibility of both crew members to inspect that passing train.

10 You air tests, like for example a locomotive out of the
11 diesel house, it's going to be a responsibility, used to be the engineer
12 and firemen that primarily do that.

13 Now it has become the engineer and conductor's
14 responsibility to do that. They assist each other in doing it. It's
15 usually the engineer's call as to who does what, but it is -- normally
16 to expedite the move a two person job.

17 Q What responsibilities do the conductor and the engineer have
18 with respect to passing and reading signals on the line?

19 A They are both responsible for doing it and they both relay
20 the aspect of the signal to each other. It's required by the rules.

21 Q What if they disagree as to the aspect of the signal?

22 A If they disagree, the most restrictive aspect that it could
23 be is what governs and the employees are required to take action to
24 bring the train under control.

25 Q Under the operating rules and in your experience on the

1 line, what are crew members other than the engineer required to do if
2 they feel under the operating rules the train should not be in the
3 direction and moving as it is?

4 A It is the responsibility of each individual on the train to
5 make -- to call it to the engineer's attention or make the correction.

6 Q And if the engineer fails to take action to stop the train,
7 what happens then? What is the responsibility of the other crew
8 members?

9 A The other crew member is responsible for stopping the train.

10 MR. MILLER: I have no further questions on direct.

11 CROSS EXAMINATION

12 BY MR. ROSS:

13 Q Mr. Babler -- is that how you pronounce i?

14 A That's correct, sir.

15 Q My name is Harold Ross, and I am counsel for the Brotherhood
16 of Locomotive Engineers. I would like to ask you a few questions in
17 regard to your testimony this morning.

18 As I understand your testimony, for some period of time
19 after you became an engineer, you were working in suburban service, is
20 that correct?

21 A That's correct.

22 Q And by suburban service, you actually mean that you were
23 involved in the passenger service around the city of Chicago?

24 A That's correct.

25 Q And what was the crew consist on these passenger trains?

1 A Up until 1991 it consisted of an engineer, locomotive
2 fireman, depending on the train, a conductor, a brakeman, and sometimes
3 ticket collector.

4 Q And how long did you work in suburban service?

5 A From 1980 to -- I was one of the last fireman to be promoted
6 I believe 1991.

7 Q Did you work in passenger service after that or did you
8 revert to freight service?

9 A I normally worked the extra boards. When I had sufficient
10 seniority to hold passenger service, I would work passenger service.

11 Q On passenger service does anybody ride with the locomotive
12 engineer or motorman, whatever you call it?

13 A We call them locomotive engineer and normally the cab is
14 occupied only by the locomotive engineer unless he requests assistance
15 from the conductor.

16 Q And since 1991 what has been the crew consist on these
17 passenger trains?

18 A Primarily a locomotive engineer plus a conductor, a
19 brakeman, and if it is a longer train it has a ticket collector, too, on
20 it.

21 Q Now when you were working as a fireman prior to -- what was
22 it? -- about 1980 to '91? I gather you said that you were working in
23 passenger service that entire time?

24 A Not entirely. When I had sufficient seniority I would work
25 the passenger jobs, because they were the preferred assignments,

1 although I had freight experience during that time when we had -- we had
2 essentially, Mr. Ross, 41 assignments and maybe five or six extra board
3 assignments and maybe we had 50 firemen, so some of us would go to
4 freight to keep up our freight experience.

5 Q So did you work as an engineer in freight service from time
6 to time?

7 A Yes, I did, off the extra board.

8 Q And that was between what years?

9 A '91 until I was elected last year as a General Chairman in
10 August.

11 Q Right. In '91, what was the crew consist of these freight
12 trains?

13 A On most of -- on virtually all of our through freight we had
14 a conductor on the operation. It would be a conductor and an engineer.

15 Q In '91?

16 A Yes. After December 13th of '91 we went on through freight
17 service to a conductor-only operation.

18 Q So that was just an engineer and a conductor. Where did the
19 conductor sit when the train was in movement?

20 A He sat on the opposite side of the cab.

21 Q And that has been going on now for over eight years?

22 A That's correct.

23 Q That is just as to the through freight trains, is that
24 right?

25 A We do have a few away freights where we do have a brakeman

1 on, industry-type jobs at switch auto plants.

2 Q Okay, so on those you have an engineer, a conductor, and a
3 trainman?

4 A That's correct.

5 Q And you say that's just a few trains --

6 A That's correct.

7 Q -- of that nature. Do you also have local freights?

8 A That is what I am referring to -- away freights.

9 Q Away freights?

10 A We have local freight, away freight.

11 Q Do you have yard jobs?

12 A Yes, we do.

13 Q And are there many yard jobs in the seniority district that
14 you have been referring to, like in Chicago?

15 A In Chicago itself we have virtually no yard jobs.
16 Milwaukee, Wisconsin has a point on my district, Jamesville, Wisconsin,
17 that has numerous yard jobs.

18 I believe each terminal has close to 15.

19 Q Fifteen yard jobs?

20 A Yes.

21 Q Doesn't Chicago or doesn't the CNW have a large terminal in
22 Chicago?

23 A It does, but that is a different seniority district than I
24 would work.

25 Q But that terminal would have a lot of yard jobs, isn't that

1 right?

2 A Yes, it does. I believe it has 80.

3 Q And that is within the jurisdiction of your General
4 Committee?

5 A Yes, it is.

6 Q And it has 80 yard jobs?

7 A That seems to be the running number, yes.

8 Q Now on these yard trains, what is the crew consist?

9 A It really depends on the management. It's management's
10 call. We have them where there is a locomotive engineer, a foreman for
11 sure, and that's somewhat management's discretion whether they put a
12 helper on the assignment.

13 Q At its discretion they can have a third individual on the
14 assignment, is that what you are saying?

15 A Yes.

16 Q Is that discretion normally exercised by management, to have
17 a three man crew?

18 A It actually, Mr. Ross, depends on the assignment. Like your
19 pull down jobs and stuff like that normally will have what we call a
20 three man crew. Industry jobs will have a two man crew. If they don't
21 have a person for the job, they will often blank the position.

22 Q Now, on those yard jobs, where is the locomotive engineer
23 located?

24 A In a locomotive.

25 Q And where is the conductor or foreman located?

1 A It depends on what they are doing, I guess I would have to
2 say. When they are coming out on to the lead, a ground crew member is
3 required to either occupy the lead end of the locomotive or the cab of
4 the locomotive to, obviously, see the way. When they down coupling up
5 tracks, it is not unusual that both of them would be down there or one
6 will be coupling the track and the other one will be the other end of
7 the yard lining up for a shove move.

8 Q And what is their function, the two people that are on the
9 ground?

10 A Their function is to perform the duties of a trainman or
11 switchman.

12 Q What would those duties be?

13 A Coupling the cars, taking hand brakes on and off, removing
14 skates if it is a track that is skated. Usually communicating with the
15 supervisory personnel as to where the cars are going to go. Discuss
16 with them as to when it is their turn to move out of that track into
17 another yard where they are building trains.

18 Q And they have no function in regard to actually operating
19 the throttle or running the locomotive to pull the train or the cars, is
20 that right?

21 A None whatsoever at that point.

22 Q Do they ever touch the throttle or operate the train?

23 A When one of the yardmen is engineer qualified, like when
24 they change ends, if they have a double set, it is not unusual that they
25 would do it then.

1 Q What do you mean by a double set?

2 A Some of our half engines, it is two locomotives coupled
3 together, and you have always got to operate from the lead locomotive.

4 Q So the lead locomotive would be where the engineer is
5 located, is that right?

6 A Normally, yes.

7 Q So this is unusual, not very typical of the operations out
8 on the terminal, is that correct?

9 A Normally the switchmen would -- the most they would do would
10 be, if he was qualified, cut it in and get the movement started if they
11 want to, if it was all right with the engineer, and then the engineer
12 would take over.

13 Q So the engineer would have to be the individual to tell him
14 to do that, is that right?

15 A It depends on the crew and the understanding they have.
16 Normally, the guys, you know, work together always, they try to work
17 together with the same crew.

18 Q But until the engineer tells him to do that, he, even though
19 is an engineer qualified switchman or trainman, wouldn't touch those
20 controls?

21 A Not normally, no.

22 Q In through freight, in your experience as a through freight
23 engineer, how often would a locomotive engineer be required to get down
24 as incidental work and throw a switch?

25 A It a lot of times depending on the type of assignment. If

1 it was a solid over the road train, where they didn't make any stops,
2 virtually neither crew member got down. If there was -- had a power
3 plant where we -- which we have a lot of service quite a bit in that
4 territory, and the conductor is back there, he usually gets a 35 car cut
5 that goes in on the track. If the switches have been lined against you
6 maybe by the power plant crew, at that point in time, the engineer would
7 get down and throw the switch because the conductor is back there 35 or
8 40 car lengths.

9 Q Okay. Now, by 35 to 40 car lengths, you are talking about
10 what, approximately 700 to 800 yards back?

11 A You are talking, each one of those cars is close to 70 feet
12 long, so you are back there a ways, yes.

13 Q Quite a distance.

14 A Yes.

15 Q In fact, it is approximately a half mile, wouldn't it be?

16 A It would be probably closer to a quarter of a mile, but it
17 is back there.

18 Q If it is only maybe 50 yards or so, the trainman or the
19 conductor would perform that service, isn't that correct?

20 A Basically, what we have, Mr. Ross, is an award that if the
21 conductor is within 10 car lengths of that locomotive, it is expected
22 that he would get the switch.

23 Q So within 700 feet at least, according to you?

24 A Right.

25 Q That engineer doesn't get down off that locomotive and throw

1 that switch, isn't that correct?

2 A Only if he wants to.

3 Q Now, it isn't also a fact on the CNW that there is a
4 bulletin or a directive out that the management does not want the
5 engineer to throw switches? Are you aware of that?

6 A I am not aware of that.

7 Q Now, you indicated that on the two man crews, that the
8 conductor now performs the service that the fireman used to do insofar
9 as air brake tests, is that right?

10 A On the consist of the locomotive, is that what you are
11 referring to?

12 Q Well, you said in your direct testimony that you used to be
13 an engineer and a fireman, and now it is engineer and conductor, and it
14 is the engineer's call as to which portion of the air test that the
15 conductor will perform, isn't that right?

16 A I was referring to the locomotives.

17 Q On the locomotives themselves?

18 A Right. Yes.

19 Q And what is the function of the conductor where the air test
20 is made on the locomotives?

21 A Depending on the locomotive engineer, some will do the
22 setting of the brake. Normally what I had when I was the engineer, I
23 would do the brake tests and I would have the conductor walk the set to
24 make sure the brakes were all set, walk the release to make sure that
25 they were all released. He would check the -- I would have the rear

1 headlight on and the front headlight on, and that would be about the end
2 of his responsibilities.

3 At that time I would usually leave the cab after we were
4 sure we had air brakes and I would, if I had a couple of sets -- or a
5 couple of units, I would walk through, check to make sure the dailies
6 were taken care of and the basically mechanical things.

7 Q And that is the function of the engineer, to do the
8 mechanical inspection, isn't that correct?

9 A I really don't know the answer to that.

10 Q Now, normally, in most cases, engineers are like you, that
11 is, they are the one that set the brake and does all the stuff that is
12 on the head locomotive in regard to the air brake test, isn't that
13 correct?

14 A Normally, -- here is how it kind of works here, is when you
15 walk up to the consist and you -- obviously, the brakes should be all
16 set on it, as you approach it. And you look there and you see some of
17 the brakes aren't set. Well, that means somebody has got to go and make
18 some adjustments, either there is angle cocks not properly -- it is not
19 properly MU'ed, hoses aren't properly coupled. At that point in time I
20 would normally have the conductor operate the brake valve and I would go
21 back to determine what the mechanical defect was.

22 Q If there was an adjustment that had to be made?

23 A That's correct.

24 Q And that would be true even though the conductor was a --
25 happened to have an engineer's certificate?

1 A If I had a conductor that was experienced in MUing
2 locomotives or that I thought had sufficient training in it, I would ask
3 him, it looks -- doesn't look like, you know, the third one is setting
4 up, do you want to take a look at it? And they normally would.

5 But if I had an inexperienced conductor, then I would, for
6 my own -- to, I guess, cover my own butt, so to say, --

7 Q But you are the responsible one, aren't you?

8 A Right. I would be the one responsible.

9 Q Yeah. And in that particular instance, the conductor
10 wouldn't be responsible, you would be?

11 A If we flat spots the engines, we both are responsible.

12 THE REPORTER: If you what the engines?

13 THE WITNESS: Flat spot.

14 BY MR. ROSS:

15 Q Now, other than throwing switches, what incidental work
16 duties would a conductor perform that an engineer normally performs?

17 A In relation to a road train?

18 Q Yes.

19 A Normally, if the train is set, if the engineer is calling
20 for a track warrant, he may take it or the conductor may take it. When
21 the conductor is on the ground, the engineer normally will take it.
22 Obviously, the conductor is not in a position to write the warrant. A
23 lot of times what will happen is a dispatcher will call you, he will
24 want to give you a warrant because he is on that side of the radio, he
25 wants to give it to you right now so he can get you going, and the

1 locomotive engineer would take the track warrant to expedite the
2 movement of the train, those sort of things.

3 Q But, basically, among that list that is listed in Article 8
4 as to the so-called incidental work duties, the only two that the
5 engineer might do that a conductor normally does would be throwing
6 switches if the conductor is way out of range, or to take track warrants
7 and certain communications, is that right?

8 A It would be probably the two that are done most commonly.

9 Q Now, you did -- let's see. You were promoted to engineer in
10 1981.

11 A I was qualified as an engineer in 1981.

12 Q And you did work as an engineer between 1981 and 1985; is
13 that right?

14 A Yes.

15 Q And prior to the adoption of the incidental work rule in --
16 what was it? 1986?

17 A 1985 for the UTU and 1986 for the BLE.

18 Q Prior to that, did you as an engineer ever get down and
19 throw switches?

20 A Not if I had a brakeman that was available, because at that
21 point in time, we had brakemen available.

22 Q But on occasion, you would do that; is that right?

23 A That's true.

24 Q It was part of your -- considered to be part of your duties;
25 isn't that correct?

1 A That's not correct.

2 Q But you did do it.

3 A I did do it. There's times you want to get off the engine
4 just to get a little exercise, walk up and line a switch.

5 Q Did you ever put in for a claim for an arbitrary or some
6 kind of penalty pay for getting down and throwing the switch?

7 A No, I don't recall that I ever did.

8 Q You just did that gratuitously?

9 A I did it -- or just for the exercise.

10 Q And did you ever take communications and write them down
11 prior to 1986 when you were working as an engineer?

12 A I don't recall that I normally did.

13 Q Some engineers did, though?

14 A I believe some would.

15 Q So actually, it was nothing new when those incidental work
16 duties were imposed upon that engineer or conductor; isn't that right?

17 A I don't know that I agree with that statement.

18 Q Okay. Isn't it correct that the only thing that changed in
19 1985 and 1986 was the fact that now you had to do it without additional
20 compensation?

21 A That would probably be a more accurate statement.

22 Q Thank you.

23 Now, in let's say 1984, you had these larger crews than you
24 have at the present time, or have had, actually, since at least 1991.
25 When you had those larger crews, and you were on a through-freight run,

1 let's say, where did the six individuals you were referring to, where
2 did they sit?

3 A In 1984, I -- we probably had at that point in time a --
4 probably a four-man crew. You had a -- you had, of course, the
5 locomotive engineer. On a through-freight, most of the firemen were off
6 of it. You have a head brakeman, a rear brakeman, and a conductor, and
7 depending on the assignment, if there was work in route, a lot of times
8 the rear brakeman would ride ahead with the brakeman and the conductor
9 would occupy the caboose. If it was a solid over-the-road assignment
10 with no stops anticipated, the conductor and the brakeman would ride the
11 caboose and the locomotive engineer and the brakeman would ride the cab
12 of the locomotive.

13 Q So there was always at least one individual in the
14 locomotive cab with the engineer?

15 A Yes.

16 Q And was that individual who sat in that cab, even though he
17 was not a fireman, required to inspect passing trains?

18 A Yes, he was.

19 Q And so the fact that the conductor who is now riding with
20 the engineer in a similar kind of train inspects passing trains is not a
21 new or additional function that's been -- or responsibility that's been
22 placed upon them; isn't that right?

23 A The conductor was always required to inspect the train.

24 Q Okay. As well as the engineer if he could do that in the
25 course of his duties; isn't that right?

1 A That's true.

2 Q And isn't it a fact that since the inception of railroading,
3 that all members of the crew who are riding in the locomotive cab with
4 the engineer, whether they were firemen or some other individual, were
5 required to call out the signals?

6 A The rule requires all employees that occupy the cab to call
7 out the signal.

8 Q And this function that's being performed by the conductors
9 now was always performed by the conductors if he was riding in the cab;
10 isn't that right?

11 A That's correct.

12 Q Now you also testified that once you became a locomotive
13 engineer that during any given month, even though you were not assigned
14 work as an engineer, assigned to a regular assignment as an engineer,
15 you might work as an engineer. Is that right?

16 A I would be used when the extra boards were exhausted, much
17 like anybody else in my seniority bracket.

18 Q And the extra board that you were on was an engine service
19 extra board at that time.

20 A I would either be on a regular passenger assignment or a
21 Firemen's Extra Board, and they'd hold you off your assignment or call
22 you off the extra board depending on the manpower situation.

23 Q And you had occasions when you were on the Firemen Extra
24 Board where you were called to run as a locomotive engineer.

25 A Yes.

1 Q And as I gather, what you're saying that even though an
2 individual today may be on a Conductors' Extra Board, from time to time
3 that individual may be called to work as an engineer.

4 A Our schedule rule requires that, Mr. Ross, the -- basically
5 it's the senior demoted man rested available at the terminal is to be
6 called. But that a lot of times is -- ends up being the first out man
7 that CMS can call that is qualified.

8 Q So what you're saying is if there's no rested engineer
9 available at the particular time that a train is called or has to leave
10 the terminal, that they'll EMS or whatever you call it --

11 A CMS.

12 Q CMS, okay. It's the same thing. They call him because it's
13 an emergency, right? There's an emergency. They need an engineer right
14 now, so they go to the first available individual, even if he's on the
15 Conductors' Extra Board.

16 A Mr. Ross, the UP has a lot of emergencies, and I don't
17 consider that one an emergency. It's just failure to properly maintain
18 the extra board.

19 Q So what they're doing is there's a -- they've cut back the
20 number of engineers, so there's a shortage of engineers at that
21 particular time. Is that right?

22 A What they essentially -- it's my experience they're trying
23 to juggle the engine service and the conductors so that they're not
24 short on both ends. They have a habit of robbing Peter to pay Paul, if
25 you know what I mean.

1 Q I understand.

2 MR. MOORE: I don't know that I stipulate to that.

3 [Laughter.]

4 I certainly wouldn't.

5 BY MR. ROSS:

6 Q I would understand what you're saying is if they had a
7 sufficient number of employees in the first instance -- correct? -- who
8 are both engineers. You have a group of engineers.

9 A Yes.

10 Q You have a sufficient number of those, and you have a
11 sufficient number of conductors, and you would put them in their pools
12 or where they're supposed to be, and you properly adjust them, this
13 wouldn't occur. Isn't that right? That's what you're saying.

14 A That would probably be a fair statement. Yes.

15 Q In the period of time that you were referring to, and let's
16 use your own experience, how many individuals were on the engineers'
17 seniority roster?

18 A My district, 275.

19 Q And of those 275 engineers, how many were on this bubble
20 that you had referred to?

21 A I would say when they would do the furloughs, they would put
22 about -- it seemed they would always get between 12 and 15 seemed to be
23 the number. Some of the people senior to me would be vented to the
24 street because they didn't have the brakemen's rights anymore. The
25 group that I was in, we were hired after 1978, so we retained our

1 trainmen's rights. So we would be the ones that would be so-called on
2 the bubble there. Kind of the utility man, if you want to call it that.

3 Q So they were the junior demoted engineers who had rights to
4 both engine and train service.

5 A We were the junior engineers and the junior firemen that had
6 rights. Yes.

7 Q Were there any individuals who were -- merely had rights as
8 firemen and nothing else at that time?

9 A In my district, no.

10 Q And that would be true today that you won't have any
11 individuals who are just firemen?

12 A We don't have -- the common term I guess is a fixture
13 hostler. We really don't have that type of a situation on the CNW
14 proper.

15 Q At that time -- what period of time are we talking about
16 when you were on the bubble?

17 A Basically I went into as a fireman in March of 1980. Once I
18 got qualified in May of '81, the last time that I can recall being
19 furloughed is while I was general chairman in 1987.

20 Q So after 1987 with your seniority, which would have been six
21 years as an engineer, you were never furloughed as an engineer again.

22 A Primarily at that point in time our manpower adjusted that
23 we were pretty much all of the firemen were promoted.

24 Q And you had sufficient seniority by that time that you never
25 went back and worked as a conductor or brakeman. Is that right?

1 A I have not worked as a conductor or a brakeman since 1987.

2 Q And is that normally the case with most people who have
3 engineer seniority, that once they have five to six years in that craft
4 that they no longer go back to train service?

5 A It depends on the district, Mr. Ross. If we have a line
6 sale or a large decline in business or ID service, there would be -- we
7 would have guys with more seniority than that set back or cut back. On
8 the busier districts, that would be a fair statement.

9 Q On the busier districts. And when you're talking about a
10 line sale, you might mean that there's a branch line or a spur line that
11 doesn't have as much work because they've diverted traffic from it or
12 they sold it to another carrier. Is that right?

13 A I'm talking wholesale line sale, sir, where they just
14 eliminated the territory from the seniority district.

15 Q So you're talking like with these new short lines and
16 regional railroads that are being created. Is that right?

17 A That and the fact that they may have abandoned it.

18 Q Well, once that individual loses his job or is furloughed at
19 that location, he would then exercise whatever seniority he has to
20 another location. Isn't that correct?

21 A If he had sufficient seniority; yes.

22 Q And we were talking about people who had more than six
23 years' seniority as an engineer. I would assume that that would be
24 sufficient for him to find a job at another location on the seniority
25 district. Isn't that correct?

1 A Normally what we would do, if there was work at the
2 location, we have something a little bit somewhat unique that we allow
3 these people to get set up and set back at the location. We try not to
4 force them from their home terminal. We have basically a mediation
5 agreement that the BLE is the signatory party to, and then we have a
6 tri-party interpretation of that agreement where we attempt to leave the
7 employees at the location.

8 Q So you're talking about a home rule agreement.

9 A I believe that's a term I've heard; yes.

10 Q And that's the kind of agreement you're talking about.

11 A Yes.

12 Q One that would allow the individual to try and remain close
13 to where his residence is located.

14 A That's correct.

15 Q But if the individual can't hold a job there, he is allowed
16 to exercise his seniority at other locations within that seniority
17 district. Isn't that right?

18 A That would be his option, to go as an engineer somewhere
19 else or take as we call it the setback and work in train service if in
20 fact he had those rights.

21 Q Under the home rule he could do that.

22 A That's correct.

23 Q Was that home rule agreement that you're talking about, was
24 a similar one in effect when you had engineers and firemen on your
25 seniority district?

1 A I believe the agreement is dated December 10th, 1975, and it
2 is the UTUE and the BLE are signatory to it.

3 Q Let's go back to one area that I don't think is quite clear.
4 You were hired by the CNW as a trainman and you got a seniority date.
5 What was that date?

6 A June 28th, 1970 on what was called the Northern Division of
7 the CNW.

8 Q Did you carry that 1970 date over to you when you were
9 qualified as a conductor?

10 A I changed seniority district in August of 1970 and I carry
11 that date on the present district that I'm on, which is called
12 Northeastern 2.

13 Q So you have a date now in train service. You continue to
14 have that date?

15 A Yes, sir.

16 Q In train service on this Northeast District that we're
17 talking about?

18 A Yes.

19 Q When you became a fireman in 1980 did you receive a date?

20 A I received a date of March 6th of 1980.

21 Q And insofar as any firing rights that you might have, that
22 is the date that you would exercise, is that right or be used in --

23 A That was the date I would use both as a locomotive engineer
24 and fireman, yes.

25 Q So that continues as your engineer date?

1 A Yes.

2 Q And the firemen were promoted in order of their dates on the
3 fireman roster, is that correct?

4 A That's correct.

5 MR. ROSS: That's all I have.

6 HEARING OFFICER MANSFIELD: Any redirect?

7 MR. MILLER: I have no further questions.

8 HEARING OFFICER MANSFIELD: You are excused, Mr. Babler.

9 THE WITNESS: Thank you.

10 [Pause.]

11 HEARING OFFICER MANSFIELD: We'll go back on the record.

12 Whereupon,

13 DAVID L. HAKEY,

14 a witness, was called for examination by counsel for the United
15 Transportation Union and, having been first duly sworn, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MILLER:

19 Q Mr. Hakey, would you please state your full name and address
20 for the record?

21 A David Hakey, 400 Randall Way, Suite 102, Spring, Texas
22 77388.

23 Q Mr. Hakey, it is my understanding that you were hired in
24 February of 1970 by the Kansas City Southern Railroad at Port Arthur,
25 Texas. Is that right?

1 A That is correct.

2 Q And in October of 1970 you became employed by Southern
3 Pacific Transportation Company at Beaumont, Texas, correct?

4 A Yes, sir, that's correct.

5 Q And you were hired as a yardman on the KCS, right?

6 A Yes, sir.

7 Q And as a yardman on the Southern Pacific Transportation
8 Company, correct?

9 A Yes, sir.

10 Q But you transferred to road service and became qualified as
11 a brakeman October 20th of 1971 on SP, correct?

12 A Yes, sir.

13 Q And you were promoted to conductor on the SP November 5th of
14 1973, right?

15 A That is correct.

16 Q And in 1996 the Southern Pacific was merged with the Union
17 Pacific Railroad, correct?

18 A Correct.

19 Q Most of your service as a conductor and a brakeman has been
20 performed from Beaumont, Texas in through freights on the main line and
21 the branch line or road switcher, correct?

22 A That is correct.

23 Q With regard to your union offices, it is my understanding
24 that from 1980 until 1987 you were the elected and full-time union
25 secretary of the UTU General Committee of Adjustment with jurisdiction

1 over agreements with the SP on the Eastern Lines, correct?

2 A Yes, sir.

3 Q And from 1991 to 1995 you served in the part-time union
4 appointed capacity as a staff member of the International President's
5 staff, correct?

6 A Yes, sir.

7 Q And since January of this year, you have been the elected
8 General Chairman of the Union Pacific Railroad Company contract with
9 jurisdiction over that contract in the Houston hub for UTU, correct?

10 A That is correct.

11 Q In your experience in operations and in your service as a
12 conductor particularly, I would like you to describe the operation of
13 the incidental work rule from the 1985 UTU agreement and the 1986 BLE
14 agreement in practice. What happens out there on the road, as between
15 the conductor and the engineer?

16 A Well, the 1985 UTU agreement permitted trainmen to perform
17 any of the duties previously performed by a fireman, and it permitted
18 both engine service and ground service employees to perform the duties
19 of lining switches, and as the crew size decreased it became more and
20 more frequent that engineers and trainmen would perform duties that had
21 been traditionally performed by each other.

22 For instance, if the conductor and/or brakeman, if you had a
23 brakeman on the assignment, were out of pocket, in other words, at the
24 far end of the train, and it became necessary to line a switch ahead of
25 the engine, the engineer would do that.

1 Q When you started on the Southern Pacific Transportation
2 Company in 1970, how many members were there on a standard road crew?

3 A Always four and sometimes five.

4 Q And since 1991, how many employees are on a standard through
5 freight crew?

6 A One and one -- one conductor, one engineer.

7 THE REPORTER: One or more?

8 THE WITNESS: One and one -- two.

9 BY MR. MILLER:

10 Q Now in the course of your employment with the Southern
11 Pacific and then after the merger with Union Pacific, have you had
12 occasion to be involved in the daily inspection of the locomotive?

13 A Yes.

14 Q Could you describe what your involvement is in the daily
15 inspection of a locomotive?

16 A Well, we would check to see if the headlights were burning.
17 We would check to determine whether the ditch lights were properly
18 functioning. We would check engine piston travel to determine whether
19 the brake sit on the locomotive consist. Release and apply handbrakes.

20 Q What specifically would you do as the conductor as opposed
21 to what the engineer would do on a crew involved in the daily inspection
22 of a locomotive?

23 A Well, if we picked up an engine on line after MU-ing the
24 unit into the consist, the engineer would apply the automatic brakes
25 from the controls of the lead unit and the brakeman would walk or the

1 conductor would walk the consist for -- and check the piston travel and
2 determine whether the brakes apply.

3 The engineer would then release the automatic brakes, apply
4 the independent brake, and you would make a determination whether they
5 applied with the independent. You would then set the automatic brake
6 valve and actuate the independent right valve and determine whether the
7 brake is released or bailed off.

8 The conductor would walk the engine consist to make sure
9 that the brakes are applied properly, applied and release properly I
10 should say.

11 Q You have before you a little booklet and the last document
12 in that booklet is UTU Exhibit 8-J. I believe it is open to that.

13 Do you recognize that as excerpts from the operating rules
14 applicable to all operating employees on the Union Pacific?

15 A Yes, sir.

16 Q In the performance of your assignments as a road conductor
17 and with your knowledge of those operating rules, would you describe the
18 responsibilities of the conductor and the joint responsibilities the
19 conductor has with the engineer in the operation of a through freight
20 train?

21 A Well, the conductor and the engineer are jointly responsible
22 to supervise all the other employees that occupy a position on the
23 train. They are jointly responsible for the safety of that train. They
24 are jointly responsible for the movement and the direction of that
25 train. They are jointly responsible to see that the rules are complied

1 with.

2 I don't really remember all of your question, Mr. Miller.

3 Q Well, you answered most of it. Let me ask you some
4 specifics. What responsibilities do the engineer and the conductor have
5 with respect to reading and verifying aspect of signals that they pass
6 on the line or road?

7 A They have joint responsibility. As soon as the aspect
8 becomes visible or audible to them, they must repeat it to one another.

9 Q What if they disagree as to what the aspect is?

10 A The safest course must apply. If you really can't determine
11 what the aspect of the signal is, stop the train until you are certain
12 that it is safe to move.

13 Q What responsibilities would the conductor have if the
14 engineer disagreed with his reading of the aspect of the signal and the
15 conductor felt the train should stop and the engineer continued to
16 operate?

17 A Then the conductor would stop the train.

18 Q Also, before you, Mr. Hakey, to change -- shift gears a
19 little bit, is what has been marked for identification as UTU Exhibit 9.
20 And I ask you if you recognize it as a letter to the BLE General
21 Chairman, W.R. Sloan, dated May 13th, 1999, from Union Pacific,
22 Director, Labor Relations, L.A. Lambert, that you received a copy of?

23 A Yes, sir, it is.

24 Q And that document itself contained an enclosure which was a
25 letter dated April 28th of 1999 to Mr. Lambert of Union Pacific from the

1 BLE General Chairman, W.R. Sloan, which you also were shown a copy of,
2 correct?

3 A That is correct.

4 Q Please explain what is going on there, what is it that Mr.
5 Sloan wants and what does Mr. Lambert tell him he has to get done to
6 accomplish it?

7 A Because a number of engine service employees hold dual
8 seniority of both train and engine service, Mr. Sloan has requested that
9 engineers be permitted, when reduced from the working engineers list, be
10 permitted to exercise train seniority at that location if they so
11 desire, as opposed to displacing the most -- not the most, or a junior
12 engineer within the Houston hub.

13 Mr. Lambert has responded to Mr. Sloan and advised him that
14 that will need the concurrence of the United Transportation Union and
15 that any agreement entered into would have to be a triparty agreement.

16 Q Mr. Hakey, in your capacity as an employee for the Union
17 Pacific Railroad and as road conductor, and also given the experience of
18 your union officer's knowledge of agreements, would you please explain
19 what the UTU agreements are that delineate -- with the Union Pacific
20 Railroad that delineate the road-yard line of demarcation? What do the
21 UTU agreements consist of in establishing that line?

22 A Well, we have agreements that differentiate between road
23 service and yard service. There are, by agreement, there are certain
24 things that road crews may do within switching limits. The
25 preponderance of the work within switching limits, by agreement, is

1 performed by yard service crews.

2 Q Now, with respect to agreements that establish the
3 difference between road service and yard service in the line that is
4 drawn with respect to it on each railroad, does the BLE have similar
5 agreements with regard to the establishment of that line?

6 A Yes, sir.

7 Q What would a carrier be required to do if it wanted to
8 extend the switching limits to permit road crews to do more work inside
9 former yard limits?

10 A They would have to obtain the consent of both organizations
11 to extend those switching limits.

12 MR. MILLER: I have no further questions on direct.

13 MR. ROSS: One minute, please.

14 CROSS EXAMINATION

15 BY MR. ROSS:

16 Q Mr. Hakey -- is that Hakey?

17 A Hakey.

18 Q Thank you.

19 MR. MOORE: You've got to have the right Texas accent.

20 [Laughter.]

21 MR. ROSS: The first time I heard it, I thought when Clint
22 said it, it was Mr. Hickey. But then I looked at the spelling. I
23 couldn't believe it would be that.

24 THE WITNESS: Ask old Ron. He knows how to --

25 [Laughter.]

1 BY MR. ROSS:

2 Q Anyway, my name is Harold Ross, and I'm with the BLE.

3 A Pleased to meet you.

4 Q And I'd like to ask you a few questions in regard to your
5 testimony, if I may.

6 A Sure.

7 Q As I understand it, all of your active employment with the
8 UP or its predecessor companies that you worked for was as a train
9 service employee.

10 A That is correct.

11 Q You've never held seniority or worked as a locomotive
12 engineer on any of those carriers. Is that correct?

13 A I've never held any engine seniority. No, sir.

14 Q And when was the last time that you actively worked on the
15 property as a conductor or switchman?

16 A November of 1998.

17 Q You recently have worked as a conductor?

18 A Yes.

19 Q Prior to that, was there a lapse of time that you worked on
20 the property?

21 A Well, I went back to the property with some regularity after
22 1987.

23 Q After 19 --

24 A 1987.

25 Q '87? Regularly, you say?

1 A Yes, sir.

2 Q Even though you had a full-time position as secretary of
3 your general committee?

4 A I was secretary of the general committee from 1980 to 1987.

5 Q From 1987 didn't you have an international staff position?

6 A On a part-time basis, and worked the preponderance of my
7 time on the railroad.

8 Q I see. Okay. And most of your work activities were in road
9 switching service. Is that correct?

10 A That's correct.

11 Q Did you ever do any work in yard service?

12 A Occasionally. Not much. I originally hired out in the rail
13 industry as a yardman on the Kansas City Southern.

14 Q But when you worked in yard service, was that crew
15 complement or consist the same as it was on the road switchers?

16 A Yes, sir.

17 Q Exactly the same.

18 A Exactly the same.

19 Q So how many individuals let's say were on those trains, road
20 switchers -- well, not road switchers, I mean in yard service -- prior
21 to 1987?

22 A Well, we had four, had three ground service employees and
23 one engine service employee, and occasionally we had a fireman.

24 Q And is that true today on the UP?

25 A No, sir.

1 Q How many individuals work in a crew, a yard crew, on the UP
2 at this time?

3 A Two for the most part, two ground service employees and one
4 engineer, and then there are -- now we're speaking of yard service?

5 Q Yes, sir.

6 A There are some yard assignments that are foreman only, which
7 is a foreman and an engineer.

8 Q What types of runs or assignments are those?

9 A Well, they're interchange assignments, just take cuts of
10 cars to the connecting carriers.

11 Q So there's not really much switching involved in that.

12 A Well, not too much. There's limited switching, but there's
13 not too much.

14 Q During your testimony you were talking about doing a daily
15 inspection of locomotives and several other things that you referred to
16 as incidental work. As I understand it, those kinds of duties that
17 you were talking about could only be performed by a qualified ground
18 service employee. Isn't that correct?

19 You are familiar with Article 8 of the agreement that sets
20 forth the incidental work duties, aren't you, since you testified as to
21 that?

22 A Yes. No, they could be performed by qualified ground
23 service and engine service employees.

24 Q Okay. But they have to be qualified.

25 A That's correct.

1 Q What's a qualified ground service employee that can --

2 A One that has proficiency in the operating rules.

3 Q And if you were just a young ground service employee or
4 something like that, you wouldn't be qualified then. Is that right?

5 A No, sir. Those are -- those people that perform ground
6 service and engine service duties are qualified by the carrier.

7 Q So anybody who is -- that individual has to be qualified by
8 the carrier.

9 A They have the proficiency in the rules to perform those
10 duties. Yes.

11 Q But they don't get any kind of a certificate or something
12 like that from the railroad, do they, saying that you're a qualified
13 ground service employee?

14 A Yes, I think they do give them a certificate.

15 Q Do you have one on you as a trainman?

16 A I think maybe I do.

17 [Laughter.]

18 Q Okay. You just handed me a certificate saying that you are
19 qualified for the position of freight conductor.

20 A Yes.

21 Q I had asked you a question taken from Section 3 of the
22 agreement which says that road and yard employees, and engine service
23 and qualified ground service employees may perform the following items
24 of work in connection with their own assignment without additional
25 compensation. And is that the certificate that would give you the right

1 to perform those eight or so items that are listed in the article, is
2 that what you are saying?

3 MR. ROSS: Have you got a copy? Thanks, Clint.

4 THE WITNESS: Yes, sir.

5 BY MR. ROSS:

6 Q You don't have a certificate from the Federal Railroad
7 Administration, do you?

8 A No, sir. I don't need one.

9 Q Okay. I just wanted to make sure that we understood. Now,
10 as I understand it, you said that if there is some disagreement as to
11 the aspect of a signal, you as a conductor have a right to take certain
12 action, is that right?

13 A Yes, sir.

14 Q And if I am -- correct me if I am wrong, I think you said to
15 stop the train.

16 A That is correct.

17 Q And that is the only action that you could take at that
18 point, isn't that correct?

19 A Well, I would first instruct the engineer to stop the train.

20 Q Let's say he refused. You would stop the train?

21 A Yes, sir.

22 Q And how do you do that, by throwing the emergency brake?

23 A Well, no, sir. If there was no imminent danger of that
24 training running over anything, I would apply the automatic brake valve.

25 Q You would reach over and grab it from the engineer or what?

1 How would you do that?

2 A I would stand up and apply the automatic brakes from the
3 control stand.

4 THE REPORTER: From the control stand?

5 THE WITNESS: Yes, sir.

6 BY MR. ROSS:

7 Q Well, in all your service, have you ever done that?

8 A I have never had to.

9 Q But you didn't answer the question, though. You never have
10 done it, right?

11 HEARING OFFICER MANSFIELD: I think he answered the
12 question.

13 THE WITNESS: No, I did. I never have -- I have never had
14 to.

15 BY MR. ROSS:

16 Q You testified in regard to Exhibit 9, do you have that in
17 front of you?

18 A Exhibit 9?

19 Q Yes, sir. UTU Exhibit 9.

20 A Yes, sir.

21 Q Now, that was a request that was sent to you by Mr. Lambert
22 -- or actually he was speaking to Mr. Sloan. Have you ever entered into
23 a home rule agreement in regard to the engineers and the conductors,
24 trainmen on the Houston hub or terminal?

25 A No, sir, I haven't yet.

1 Q So this has not been entered into, is that right?

2 A No, sir, it has not.

3 Q Okay. Now, from your knowledge as General Chairman or
4 what-have-you, have there ever been any home rule agreements in effect
5 in the Houston terminal prior to 1998 for the -- let's say for the
6 engineers and firemen, for example?

7 HEARING OFFICER MANSFIELD: Excuse me. Do you mean prior to
8 1999?

9 MR. ROSS: 1998.

10 HEARING OFFICER MANSFIELD: It is a 1999 letter.

11 MR. ROSS: Yeah, well, prior to 1999 is fine, but --

12 HEARING OFFICER MANSFIELD: Okay.

13 BY MR. ROSS:

14 Q Prior to 1999.

15 A Mr. Hahs tells me yes.

16 Q Don't rely on Mr. Hahs. From your own knowledge.

17 HEARING OFFICER MANSFIELD: You have to answer the questions
18 without coaching.

19 THE WITNESS: Well, I was trying to remember back on the old
20 SP whether we had home rules for engineers, and I looked over to Mr.
21 Hahs and he was General Chairman at the time.

22 BY MR. ROSS:

23 Q Well, let me ask you something that you might be more
24 conversant with. Were there any home rule agreements in effect for the
25 conductors, trainmen, switchmen at the Houston terminal, prior to 1999?

1 A Yes. Yes, sir.

2 Q So home rule agreements are not unusual, isn't that right?

3 A No, sir.

4 Q And they have been in effect for decades, isn't that true?

5 A The last two anyway, yes, sir.

6 Q The last two decades.

7 A The last two decades.

8 Q Since you have been working then. Okay. Now, are the -- do
9 you have any -- I gather you don't have any tripartite agreements with
10 the BLE except the one that Mr. Sloan may be seeking, is that right?

11 A No, sir, not to my knowledge. None that I can think of
12 right at the moment.

13 MR. ROSS: I think I am through with the witness. Thank
14 you.

15 HEARING OFFICER MANSFIELD: Okay. I have a few questions.
16 Is that all right, if I jump in now?

17 MR. MILLER: Sure.

18 REDIRECT EXAMINATION

19 HEARING OFFICER MANSFIELD: Regarding Exhibit 9, are you
20 currently in negotiations to reach a home rule agreement?

21 THE WITNESS: Yes, ma'am.

22 HEARING OFFICER MANSFIELD: So you've actually met with the
23 company?

24 THE WITNESS: We have not met. I have exchanged some
25 correspondence with the carrier and advised the carrier that I'm willing

1 to meet with them to discuss the details of any such agreement.

2 HEARING OFFICER MANSFIELD: Okay. And can you give me some
3 idea of when that correspondence took place?

4 THE WITNESS: Yes, ma'am.

5 HEARING OFFICER MANSFIELD: Just approximately. You don't
6 have to look in your documents.

7 THE WITNESS: Within the last month.

8 HEARING OFFICER MANSFIELD: And following up on a question
9 by Mr. Ross, are you aware of any time that a conductor has had to throw
10 the brake switch while an engineer was -- refused to stop the train?

11 THE WITNESS: Well, I don't know if the engineer refused to
12 stop the train.

13 HEARING OFFICER MANSFIELD: Or failed to stop the train.

14 THE WITNESS: There have certainly been instances where the
15 conductor has taken action to stop the train, yes.

16 HEARING OFFICER MANSFIELD: And how did you become aware of
17 those instances?

18 THE WITNESS: Well, quite frankly, most of the time, it
19 didn't work and I had to represent them at the investigation.

20 HEARING OFFICER MANSFIELD: Fair enough.

21 I don't have anything further. Do you have redirect?

22 MR. MILLER: I have no redirect. UTU would move the
23 admission of --

24 MR. ROSS: One moment, please. I think as a result of your
25 questions, I have a couple of questions --

1 HEARING OFFICER MANSFIELD: Okay.

2 MR. ROSS: -- that I have to ask.

3 RECROSS EXAMINATION

4 BY MR. ROSS:

5 Q Although you stated that you're currently in negotiations in
6 regard to a home rule, have you had negotiations or have you had
7 conferences with Mr. Lambert and also with Mr. Sloan?

8 A I have had discussions with Mr. Lambert and with Mr. Sloan.

9 Q You've had some discussions with Mr. Sloan personally?

10 A Yes, I have.

11 Q Mr. Lambert was not present at those meetings?

12 A Not in regard to the home rule, no, sir.

13 Q Now, insofar as this stopping the train, the conductor
14 stopping the train, is there a valve or an emergency brake valve which
15 is located at the seat that's normally occupied by the conductor or
16 other person on the locomotive, a person other than the engineer on the
17 locomotive?

18 A There is an emergency brake valve on what's commonly
19 referred to as the fireman side of the engine.

20 Q And that's normally what would be applied to stop the train
21 if you had one of these situations that you were talking about; isn't
22 that right?

23 A I don't know what's normal. I think the safest thing to do
24 is to stop the train in a manner that doesn't put the train in jeopardy
25 of derailing, and when you apply the emergency brakes, you could have

1 severe slack action and cause a derailment and serious consequences.
2 It's more prudent to apply the brakes from the engineer's brake valve.

3 Q That would be more prudent?

4 A Yes.

5 Q But what does the rule require of the individual occupying
6 the seat that I'm referring to, where the conductor now sits and the
7 fireman used to sit, et cetera?

8 A The rule requires when the conductor or engineer fails to
9 stop the train or emergency requires, other crew members must stop the
10 train immediately.

11 MR. ROSS: That's all.

12 THE WITNESS: All right.

13 HEARING OFFICER MANSFIELD: Anything else?

14 MR. MILLER: I have no questions.

15 HEARING OFFICER MANSFIELD: You may be excused.

16 MR. ROSS: No redirect?

17 MR. MILLER: I don't have any more questions, no.

18 MR. ROSS: Thank you.

19 THE WITNESS: Thank you.

20 [Witness excused.]

21 MR. MILLER: UTU would move the admission of UTU Exhibit 9.

22 HEARING OFFICER MANSFIELD: Any objection to Exhibit 9?

23 MR. ROSS: No, objection.

24 HEARING OFFICER MANSFIELD: Okay.

25 MR. MILLER: And UTU withdraws Exhibit 10. And that

1 concludes the presentation of UTU's case in chief subject only to some
2 questions I have of the two carrier personnel present when their phase
3 of the case comes up.

4 HEARING OFFICER MANSFIELD: First of all, Exhibit 9 is
5 received.

6 [UTU Exhibit 9 was received in evidence.]

7 HEARING OFFICER MANSFIELD: Let's go off the record for a
8 moment.

9 [Off the record.]

10 HEARING OFFICER MANSFIELD: Let's go back on the record.

11 Okay. Mr. Miller, you wanted to question some of the
12 carrier's witnesses?

13 MR. MILLER: Yes, I would appreciate if the carrier could
14 furnish Mike Barzytis for several questions I have.

15 HEARING OFFICER MANSFIELD: Mr. Barzytis, you have been
16 previously sworn and that oath still applies.

17 Whereupon,

18 MICHAEL BARZYTIS,
19 a witness, having been recalled for examination and, having been
20 previously duly sworn, was further examined and testified as follows:

21 THE WITNESS: Yes, ma'am. Always.

22 DIRECT EXAMINATION

23 BY MR. MILLER:

24 Q Mr. Barzytis, I am going to show you again what has been
25 marked as UP Exhibit 1 and UP Exhibit 2, that you have previously

1 testified about, I believe, have you not?

2 A Yes.

3 Q And I was going to ask you, in connection with what those
4 exhibits show with respect to use of FRA certified engineers serving as
5 conductors, whether the carrier calls persons off of the conductor
6 roster who are FRA certified engineers for use as engineers?

7 A Yes. The answer is yes. There are a lot of engineers who
8 also have conductor seniority, so they would be on those rosters.

9 Q Yes, I understand. But with respect to if a -- if Union
10 Pacific runs short of engineers required for trains going out, my
11 understanding is that Union Pacific will call and employ off of a
12 conductors roster who is an FRA certified engineer to serve as the
13 engineer on the assignment.

14 A Correct.

15 Q Okay. And another thing I wanted to ask you, but I am going
16 to furnish you with an item that I don't have as an exhibit and counsel
17 may come and take a look. But what it appears to be is Union Pacific
18 Railroad Revised Special System Instructions, Effective Monday, June 1,
19 1998. Are you familiar with that document?

20 A Yes, sir.

21 Q Okay. And I turn to page 20 of that document, and
22 specifically to the bottom of the page and the paragraph enumerated
23 2(a). And in connection with that, what are the carrier requirements
24 with respect to those serving off of a conductor's roster who are FRA
25 certified engineers with respect to their operation of an engine while

1 they are a conductor?

2 A [No response.]

3 Q I will withdraw that question because it confuses you. Let
4 me ask it this way.

5 HEARING OFFICER MANSFIELD: Let me suggest before you ask
6 this question that we make copies of this after your questioning and
7 mark it as an exhibit because I haven't seen it and the BLE hasn't seen
8 what you are referring to.

9 MR. MILLER: Okay.

10 HEARING OFFICER MANSFIELD: So I guess we would mark it as
11 UTU 10?

12 [UTU Exhibit Number 10 was marked for
13 identification.]

14 MR. MILLER: Yeah, it is up to UTU-10.

15 HEARING OFFICER MANSFIELD: Okay. So after the witness has
16 testified, we will make copies of that and put it into evidence. Okay.

17 BY MR. MILLER:

18 Q Based on those instructions, and overall, is it the carrier
19 policy and desire that FRA certified engineers who are serving as
20 conductors because their seniority won't let them hold an engineer
21 assignment, should nonetheless, while serving as conductors, take the
22 opportunity to operate the engine to keep up their skills?

23 A Under Item 7(a), qualification of engineers, it's paragraph
24 3, and I will quote the rule.

25 Q Okay.

1 A And the rule reads, "Many promoted and qualification
2 engineers retain seniority rights as brakemen and/or conductors. Due to
3 changes in work force requirements, some of these engineers may return
4 to brakeman or conductor assignments. When this occurs, these
5 individuals may be permitted to operate the locomotive under provisions
6 of rule 1.47(b).1 if such activity does not interfere with their
7 assigned duties and they have the consent of the working engineer of the
8 crew. Permitted locations are not limited to territories where the
9 person was previously qualified. These instructions apply only to
10 promoted persons qualified as an engineer of the Union Pacific Railroad.
11 For persons who have had their seniority restricted while an engineer,
12 that restriction remains in effect. Do not allow a person who was
13 disqualified while an engineer to operate a locomotive. Allow only a
14 person holding a valid Form 20106, Union Pacific Railroad certificate to
15 operate locomotives, to operate a locomotive or train."

16 MR. COHEN: May I interrupt just for one moment to help?
17 Maybe this will clarify a little. Our book of exhibits, which has
18 previously been served on everyone, in Exhibit binder Roman numeral IV,
19 Roman numeral V, Item 3, contains this pertinent provision in one page
20 that Mr. Barzytis that has just read from. The very -- it is the very
21 last page of the booklet, very last page in the binder. One page.

22 HEARING OFFICER MANSFIELD: All right. That's Item 7.

23 MR. COHEN: And he was reading from the final paragraph in
24 Item 7, before Item number 8.

25 HEARING OFFICER MANSFIELD: So is it your intention to put

1 in any more of this document?

2 MR. MILLER: There was an additional paragraph that was just
3 indicative of policy, but rather than put in an exhibit, I will not.
4 And that testimony is fine and the use of the last page of --

5 MR. COHEN: Binder 4.

6 MR. MILLER: -- Binder 4 is fine. That was shown a
7 timetable on the cover, I guess, which is why it wasn't that revealing.

8 MR. COHEN: I apologize for that. It actually came from UP,
9 Timetable Number 2 System, 10/29/95. So, Mr. Barzytis, in the future,
10 would you refer your timetables to -- in another manner so that all
11 counsel will be up to date on this. Can you handle that, sir?

12 THE WITNESS: Well, --

13 HEARING OFFICER MANSFIELD: Just so I am clear, this is the
14 same thing that is in the 6/1/98 revisions?

15 MR. MILLER: Yes. Apparently it is reproduced verbatim in
16 the special instructions booklet that the witness just read from, out of
17 the timetable that is the last page of the BLE exhibits. It is an
18 apparent and intentional duplication by the carrier.

19 And I have no further questions, Mr. Barzytis, of you.

20 CROSS-EXAMINATION

21 BY MR. COHEN:

22 Q Good morning again, Mr. Barzytis. George Cohen. I have
23 just a few. If you would be kind enough to turn your attention to your
24 UP Exhibit 2-B, which is captioned, "Cross-Utilization of Trainman
25 Detail" -- "Cross-Utilization of Trainman Detail." I believe you

1 already testified to this, but I just wanted to clarify the record in
2 light of Mr. Miller's questions of you. I believe you have previously
3 testified that this composite table contains the list of individuals who
4 were in train service but were certified engineers, and during this 90
5 day -- 91 day preponderance check period, in fact, worked as engineers
6 during that period of time. These were all individual trainmen who did
7 in fact hold FRA engineer certification, is that correct?

8 A Correct.

9 Q Thank you very much on that. I would appreciate if you
10 would now just look at your Exhibit 2-A which, Mr. Barzytis, you had
11 captioned -- UP had captioned, "Employees with Craft Assignment Changes
12 for the Date Range 1/5/99 to 4/5/99." Now, do you recall, Mr. Barzytis,
13 that I asked you a series of questions about that when you joined us two
14 days ago? And your testimony, which appears as transcribed, beginning
15 at page 31 of my mini-transcript, and continues over to page 33, and you
16 responded to my question by saying that at various seasons of the year,
17 you would -- the carrier would reduce the working list of engineers, and
18 if a given engineer, in the face of the working list being reduced,
19 couldn't hold his position as an engineer, he could, and in those
20 instances did demote to train service craft, is that correct?

21 A Yes, sir.

22 Q Okay. And I believe I looked at you and said to you, sir,
23 is that what the parties in the industry normally refer to as, quote,
24 "ebb and flow," is that correct?

25 A Yes, sir.