

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

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T. J. Donnigan
General Chairman

March 29, 2005
25016

TO: Portland Hub Local Chairmen: T. A. Frederick R. W. Bennett
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M. S. Nelson R. R. Franks
J. R. Lance

Salt Lake Hub Local Chairmen: T. S. Holden R. W. Rhodes
J. P. Benich R. B. Jeppson
C. S. Gallagher W. W. Wiseman
B. L. Gates R. C. Saccomanno
S. P. Wells M. P. Kessler
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(cc: Mr. E. L. Pruitt – Vice President
Mr. J. L. Dayton – Vice Chairman)

RE: AGREED UPON INTERPRETATION OF ARTICLE VII-BLET NATIONAL AGREEMENT
DATED DECEMBER 16, 2003 – AUTOMATIC MARK-UP INTERPRETATION

Dear Brothers,

This refers to earlier correspondence and/or Email concerning Carrier's July 7, 2004 notice of intent to implement the provisions of Article VII of the 2003 BLE National Agreement which reads as follows:

“(a) A carrier may propose implementation of a rule providing for the automatic mark up of employees for service after the expiration of any period of authorized or approved time off, in accordance with the procedures set forth herein.

(b) The carrier shall serve written notice of its proposal on the appropriate organization representative(s). Such proposal shall include a synopsis of the proposed rule, which shall be consistent with validated current scientific data and findings regarding employee rest and fatigue abatement. An initial conference on the proposal will be held within thirty (30) days after the postmarked date of the notice. If the parties fail to resolve the matter within sixty (60) days after the date of the initial conference, the carrier may submit the matter to final and binding party-paid arbitration at any time thereafter.

(c) The arbitrator's jurisdiction shall be limited to a determination of the terms and conditions for an automatic mark-up rule in light of all relevant circumstances involved. The arbitrator's decision shall be in writing and shall be issued not later than thirty (3) days after conclusion of the hearing.”

Following receipt of Carrier's notice, the parties met on three (3) different occasions and have successfully concluded negotiations pursuant to the requirements of Article VII. The parties' "Agreed Upon Interpretation of Article VII" is attached, along with Side Letter No. 1 and the "Agreed Upon Questions and Answers to the Interpretation of Article VII."

During the negotiating process, the question was raised about whether BLET Bylaws made this matter subject to the ratification process. On behalf of the six (6) UPRR BLET General Chairmen, Brother D.

W. Hannah posed the question to National President D. M. Hahs in letter dated September 3, 2004 and Brother Hahs' responded in letter dated September 22, 2004 as follows:

"Question 1 – 'Since Article VII is part of the BLE National Agreement that was previously ratified by the rank and file, is the final rule agreed upon pursuant to Section 1(a) of Article VII with the general chairmen of Union Pacific subject to ratification.'

Response – No. On-property application/interpretation entered into by the organization with the carrier implementing the provisions of Article VII would not required [sic] ratification as the ratification of the National Agreement would govern these implementing agreements."

As mentioned above, the "Automatic Mark-Up Interpretation" reached by the parties has been successfully concluded following Carrier's notice to implement the provisions of Article VII of the 2003 BLE National Agreement.

Although the Agreed Upon Interpretation is self-explanatory, the following synopsis is offered:

Article I: Upon expiration of approved absences for compensated or non-compensated time off, engineers will be automatically marked up for service.

Article II: Engineers working regular bulletined assignments (other than unassigned pool freight or a road or road/yard combination extra boards) will be automatically marked up for service upon expiration of the approved absence.

Engineers working unassigned pool freight service or assigned to road or road/yard combination extra boards who return from absences of less than 72 hours will be automatically marked up and available for service at the expiration of approved time off.

Engineers working unassigned pool freight service or assigned to road or road/yard combination extra boards who return from absences of 72 hours or greater between the hours of 0800 and 2230 will be automatically marked up and available for service at the expiration of approved time off.

Unassigned pool freight and extra engineers returning from absences of 72 hours or greater between the hours of 2231 and 0759 will be automatically marked up to their respective boards, but will not be eligible for a call to work prior to 0759. Although contact by CMS may be made prior to 0800, the starting time of the assignment must be after 0759.

Unassigned pool freight and extra engineers who rotate up their respective boards to the first-out position, but who are not eligible for a call between the hours of 2231 and 0759, will be held first-out until the engineer is available for service or call.

In the application of Article II D., engineers unavailable for service between the hours of 2231 and 0759 will not be subject to a deduction in guarantee, nor will that time be considered as "unavailable" or "absence time" that can be used to offset the applicable guarantee.

In the application of Article II D., engineers unavailable for service between the hours of 2231 and 0759 will not be considered as “unavailable” for purposes of determining applicable labor protection benefits, nor can that time be used to offset applicable labor protection payments.

The parties further resolved an earlier issue with regard to engineers making requests to extend lay offs and have the extension count as one (1) occurrence as depicted in Article II E. b., so long as the request to extend is made prior to the expiration of the initial period of approved time off:

“In determining the number of layoff occurrences an engineer makes during the payroll period, a continuous period of unavailability for call for the same reason (status code) shall count as only one occurrence regardless of the number of timely requests (requests made before expiration of the previously approved time off) that are made by the engineer for extension of the time off.”

Example 1: Engineer off for 24 hours makes request to extend original layoff prior to the expiration of the 24-hour period and is granted another 24 hours off will count as a single occurrence if the reason for extension is the same as the original request.

Example 2: Engineer off for 24 hours makes request to extend after expiration of the approved time off will count as a second occurrence if additional time off is approved even if the reason for the extension is the same as the original request.

Example 3: Engineer off for 24 hours and makes request to extend for a different reason than the initial request will count as a second occurrence if the extension is approved.

Article III: Requests for time off must be made to the appropriate carrier representative. This requirement is not intended to supersede existing legal or contractual obligations for employees being granted time off.

Current agreement provisions requiring sufficient employees to maintain reasonable layoffs are unchanged by this Interpretation.

Employees needing authorized leaves of absences are required to furnish information relative to the nature of the injury or illness necessitating the leave of absence.

The approval of absences will take into account the nature of the employee’s request and balance against the needs of the service.

When a carrier representative other than CMS personnel is authorized to approve absences (e.g. the so-called “misery desk”), that designee must be identified and available via telephone number(s) to be provided to the employee. Requests for time off forwarded to the carrier representative other than CMS personnel not handled or responded to within 30 minutes of the request will be handled by CMS personnel.

Requests for additional time off must be made through CMS or designated carrier representative.

Article VI: With respect to union officers needing time off to conduct union business, the parties are fully aware of their rights and obligations. However, it is understood that union officers laying off are expected to make a good faith estimate regarding the duration of the layoff and should contact CMS in the event additional time is needed over and above the original request.

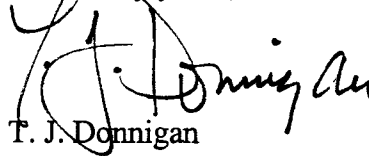
Article V: In the event the provisions of this Interpretation conflict in any manner with the provisions of an existing agreement rule, the terms and conditions of this Interpretation will govern.

This Interpretation does not restrict an engineer from marking up early in accordance with existing rules. (e.g. interdivisional pool freight engineers have the right to mark up to protect their assignment 12 hours or less in advance of the expiration of vacation pursuant to Appendix 8, Article II, Section 2(c) of the Idaho Schedule)

In its letter dated March 4, 2005, Carrier indicated it contemplated implementing the "Agreed Upon Interpretation" on or about April 16, 2005 subject to finalizing their plans for implementation. As of this date, the Union has not been officially notified when Carrier actually intends to implement, but I will promptly advise all concerned when I am given the date for implementation.

If there are any questions or concerns, please do not hesitate to contact me.

Fraternally yours,



T. J. Donnigan