

DISPUTE SETTLEMENT

Between

UNION PACIFIC RAILROAD COMPANY

And the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

**VACATION AND PERSONAL LEAVE DAY
MODIFICATION SETTLEMENT**

In Brotherhood of Locomotive Engineers and Trainmen, General Committee of Adjustment, Central Region v. Union Pacific Railroad Company (U.S.D.C., Northern District of Illinois, Eastern Division, No. 10 C 8296) the court, in its January 24, 2011, Memorandum Opinion and Order denied Plaintiff BLET's motion for preliminary injunction and directed the parties to arbitrate the dispute. As part of its Award and Order dated January 6, 2012, the Arbitration Board remanded the issue of monetary relief back to the parties for disposition while retaining jurisdiction should the parties be unable to reach an accord. The following Settlement thus resolves both the above cited lawsuit and the arbitration award's remand on relief.

Specifically, **IT IS AGREED:**

Article I. Vacation Issues

Section 1: Vacation Group Identification

- A. Effective with the vacation year commencing January 1, 2014, the scheduling of vacation shall be based on the location and class of service where the engineer was assigned for a preponderance of the time during the six (6) month qualification measurement period. The qualification measurement period will be April 1 through September 30.

EXAMPLE: For vacation year 2014, the six month measurement period will be April 1 – September 30, 2013.

NOTE: This does not affect current arrangements under which craft (i.e. engineer, hostler, conductor, etc.) is determined for vacation scheduling purposes.

Section 2: Vacation Scheduling

A. Effective with the vacation year commencing January 1, 2014, the following vacation scheduling parameters will be adopted for the applicable vacation groupings established within the jurisdiction of the BLET Central Region General Committee of Adjustment.

- 11 weeks @ 1.6 times the true (unrounded) flat line number (last 8 weeks of the year plus 3 other weeks by group choice)
- 10 weeks (by group choice) @ 1.4 times the true (unrounded) flat line number
- 10 weeks (by group choice) @ 1.2 times the true (unrounded) flat line number
- Remaining calendar weeks @ the flat line number (rounded up)

Fractional results after multiplying the number of weeks times the true (unrounded) flat line will be rounded up to determine the number of engineers who may schedule a vacation during those weeks.

NOTE: Examples of these agreed-upon scheduling parameters and calculation method are appended as Attachment No. 1 to this Settlement.

B. It is recognized by the parties that smaller vacation groups (i.e. those with less than 100 weeks to schedule) present unique scheduling challenges not served by the above parameters. Accordingly, the applicable Local Chairman and CMS representative will confer and agree on the vacation schedule for such groups. If they cannot agree, the matter will be subject to discussion and resolution between the General Chairman and the Director Labor Relations.

Section 3: Backfilling Vacation Weeks

A. A vacation week/slot as originally scheduled will be considered open and available once an employee uses all his/her single day vacation days from that week/slot, or vacates the week for other reasons (retirement, resignation, etc). The vacated week will then be available to be filled by the Local Chairman with jurisdiction over the vacation grouping in which the vacant week/slot occurs.

Section 4: Single Day Vacations

- A. Effective with the vacation year commencing January 1, 2014, engineers working within the jurisdiction of the BLET Central Region General Committee of Adjustment will be permitted to take up to four (4) weeks of their annual vacation in single day increments.
- B. Effective with the vacation years commencing January 1, 2015 and beyond, engineers working within the jurisdiction of the BLET Central Region General Committee of Adjustment will be permitted to take up to five (5) weeks of their annual vacation in single day increments. Should future agreements permit additional weeks (i.e. 6 or more) of annual vacation it is the parties intention that those additional weeks may also be taken in single day increments.

Section 5: Advancing/Deferring Vacation Start Date & Vacation Extensions

- A. All vacation weeks will be scheduled to begin on Monday. An engineer may, if desired, advance (prior to the scheduled date) or defer (after the scheduled date) their vacation up to (3) days subject to the following:
 - 1. An engineer desiring to advance or defer their vacation must notify CMS no less than twenty-four (24) hours prior to the day the vacation is scheduled to commence.
 - 2. The first twenty-four (24) hours of the request to advance or defer the start date of their vacation will be granted to the engineer without restriction. The remaining time requested by the engineer to advance or defer the start date of their vacation will be subject to manpower considerations and the service needs of the Carrier.
- B. At the end of their scheduled vacation an engineer may, if so desired, request up to forty-eight (48) hours to extend their time off prior to marking up back to service. Engineers electing this option time must contact CMS prior to the end of their vacation week. Such request will be granted to the engineer without restriction but will require the engineer to use either a compensated lay-off status by taking either single day vacation and/or personal leave days to cover the time requested, or in the alternative the engineer may elect to lay-off personal (non-compensated).

Article II. Personal Leave Banking/Buyout Plan

Section 1: Banking Personal Leave Days

- A. Effective with the date of this Settlement, engineers working within the jurisdiction of the BLET Central Region General Committee of Adjustment will be immediately

provided with a personal leave day banking arrangement. The following questions and answers will describe the personal leave banking program.

Q-1. How does an engineer advise the Carrier of his/her desire to bank personal leave days?

A-1. Unused personal leave days or days not approved will automatically be banked on December 31st if the engineer is assigned to a job that qualifies for personal leave at the end of the year when the banking occurs. If, on December 31st the engineer is assigned to a job that does not qualify for personal leave days the engineer must contact Timekeeping by March 15th of the following year to request that any remaining unused personal leave days are banked.

Q-2. How is the banking of personal leave days affected for an engineer who was on an extended leave or otherwise in an inactive status for a significant part of the current year.

A-2. Any extended leave or period of inactive status over six months (180 days) in the aggregate shall be handled by reducing the number of personal leave days available to be banked on December 31st by the number of holidays which occurred during the period(s) of the extended leave or inactive status in addition to the number of actual personal leave days taken and/or paid holidays or holiday opportunities. However, the above reduction due to period(s) of extended leave or inactive status will not cause the number of personal leave days available to be banked to go below five (5).

EXAMPLE: On January 1st Engineer Jones is credited with eleven (11) personal leave days. During the year he is on a leave of absence for seven months during which four (4) recognized National Holidays occur. Upon return from leave Engineer Jones takes three (3) personal leave days prior to the end of the year. On December 31st only three of the four holidays that occurred during his leave will be used to reduce his personal leave days and he will be permitted to bank five (5) days.

NOTE: For the purpose of this Settlement the term "holiday opportunities" as used in Q&A #2 and #13 is defined as any and all holidays where an engineer would have otherwise qualified for holiday pay but for reasons of his own unavailability failed to qualify under the applicable rules governing holiday pay

Q-3. Once personal leave days are banked, when may an engineer use them?

A-3. Banked personal leave days may only be used at retirement, resignation, extended leave, death or catastrophic personal or family occurrence. Beginning in 2015, banked days will also be subject to be cashed out pursuant to Section 3 hereof.

Q-4. How many days may an engineer put in the bank?

A-4. 200 days.

- Q-5. Assuming an engineer has banked personal leave days, will his/her estate be paid for the banked days upon the engineer's death?
- A-5. Yes.
- Q-6. Assuming an engineer has begun an extended leave just prior to a general wage increase, will all personal leave days taken be paid at the rate of the last service performed or will the rate be increased when the general wage increase goes into effect.
- A-6. No. Payment will be at the rate of the last service performed.
- Q-7. May the Carrier unilaterally buy down an engineer's banked personal leave days?
- A-7. No.
- Q-8. What rate of pay will be used for banked personal leave days?
- A-8. Payment will be at the rate of the last service performed.
- Q-9. An engineer is entitled to 7 personal leave days during the year. The engineer requests 2 personal leave days May 14 but that request is not approved. Are those 2 days automatically banked, or may the engineer request them again later in the year?
- A-9. Those 2 personal leave days may be requested again during the year.
- Q-10. May an engineer donate banked personal leave days to another employee?
- A-10. If there is an agreement covering the donation of personal leave days to another employee in effect, engineers may donate banked days in accordance with that agreement.
- Q-11. May banked personal leave days be used by an engineer who is assigned in service covered by the paid holiday rules?
- A-11. Yes, if the reason for such use meets the requirements in Q&A #3.
- Q-12. May an engineer request payment for banked days in excess of the time off work, e.g., the engineer takes fourteen (14) days off for Family Medical Leave and requests to be paid for twenty-five (25) banked days?
- A-12. The number of banked days used should not exceed the number of days off work. However, this would not preclude the use of a greater number of banked days in extraordinary circumstances when both the engineer and the Company representatives agree.
- Q-13. An engineer qualified for personal leave days works in holiday covered service through October 31st and then moves to road freight service not covered by paid holiday rules. Will the engineer be able to take personal leave days during November and December?

- A-13. Yes, but the engineer's annual entitlement of personal leave days would be reduced by paid holidays or holiday opportunities during the period the engineer was working in service covered by the paid holiday rules.
- Q-14. How does an employee's craft assignment on December 31st affect the treatment of unused personal leave days from that calendar year?
- A-14. If the employee is an engineer on the last day of the year, any unused personal leave days from that year are banked. If the employee is working in another craft on the last day of a year, any unused personal leave days from that year will be handled in accordance with the agreement governing that craft. For example, if the employee is working as a trainman, and the agreement governing trainman contains a provision for carry-over of unused personal leave days, any unused days will be carried over in accordance with the terms of the trainmen's agreement.
- Q-15. If an employee has carry-over personal leave days under a UTU CBA, and is set up as an engineer, will the employee be eligible to take the carry-over days?
- A-15. Yes, prior to any UTU CBA carry-over expiration date.
- Q-16. What happens to any 2012 personal leave days that were carried over into 2013 under the BLET-CBA?
- A-16. Existing rules concerning the use of carry-over personal leave days by the May 1st cut-off date continue to apply. Personal leave days earned prior to January 1, 2013 will not be subject to banking.
- Q-17. If any engineer worked the entire calendar year on assignments covered by the paid holiday rules, would such engineer's unused personal leave days for that year be banked at year end?
- A-17. The engineer has no personal leave days to bank because the engineer was covered by the paid holiday rules throughout the year.
- Q-18. When an engineer uses banked days, will the payment for such days be included in the calculation of 1/52 vacation pay for the subsequent calendar year?
- A-18. Yes, but only those banked days paid pursuant to the reasons expressed in Q&A #3. Banked days paid pursuant to Section 3 hereof will not be included in the calculation of 1/52 vacation pay.
- Q-19. Can the lump-sum payment for banked personal days be used to offset any labor protection?
- A-19. No. Similarly, any lump-sum payment of banked personal leave days will not be included as compensation in the test period average (TPA) calculation under any protective arrangement.

Q-20. If an extra engineer uses banked personal days during an otherwise unpaid absence, will such engineer be considered "on the board" for guarantee purposes?

A-20. No.

Q-21. Can a banked day be used for rest/layover day compensation?

A-21. No.

Q-22. May an engineer be paid one or more banked personal leave days for a day on which the engineer is already being compensated, e.g., takes three (3) days of paid bereavement leave and also requests to be paid for three (3) banked personal leave days?

A-22. No.

Q-23. May an engineer use a banked personal leave day to offset unpaid days under the National Bereavement rule (e.g., absent 3 days but only compensated for 2 days because engineer only stood to have worked 2 of those days)?

A-23. Yes. However, current year personal leave days, if available, must be used prior to using banked days. Further, any use of banked days will be subject to the conditions cited in Q&A #3.

Section 3 – Option to Sell Banked Personal Leave Days

A. Effective January 1, 2015, engineers working within the jurisdiction of the BLET Central Region General Committee of Adjustment who have banked personal leave days pursuant to this Agreement may, at their election, "cash out" or sell all or a portion of their banked personal leave days. The following shall govern in the exercise and administration of this option:

1. Engineers who desire to cash-out or sell their banked personal leave days must submit a formal written request to UP's Timekeeping bureau between February 1 and March 15 of each year. Engineers may make one (1) irrevocable request pursuant to this Section 3 annually. In administering this Paragraph (1), all requests must be received by Timekeeping with the February 1 – March 15 time frame each year. Requests submitted or received prior to February 1 or after March 15 each year will not be accepted or processed.
2. Payment for banked personal leave day(s) requested by an engineer to be cashed-out or sold will be made at the current applicable rate based on the engineer's last service performed immediately prior to the date he or she submits his or her request for cashing-out or selling of his or her banked personal leave day(s).
3. Payments made pursuant to this Section 3 will be made to the employee by no later than May 1 (approximately 45 days) of the current year.

Section 4 – In Lieu Payment for Unused Personal Leave Days in the Current Year

- A. Upon retirement or voluntary resignation, engineers in active service at time of their retirement or resignation will be paid at the applicable rate of service last performed in lieu of any unused personal leave days, including, if applicable, any carryover personal leave days, they may have remaining at the time of their retirement or resignation. This payment will be made only to such engineers eligible or entitled to receive personal leave days under controlling Agreement provisions.

NOTE: It is not the intent of this Section 4 to provide personal leave days or payment therefore to engineers who are not entitled or eligible to receive personal leave days – e.g., engineers holding assignments on which they are not eligible to receive personal leave days (i.e. jobs covered by holiday pay rules).

- B. Any unused personal leave days will be paid in lieu to the estate of deceased engineers who were in active status as an engineer at the time of their death.

Section 5 – General

- A. Nothing in this Article II is intended, nor shall it be interpreted, to increase an engineer's entitlement to holiday pay or personal leave days or to otherwise increase their maximum entitlement thereto beyond that provided in existing Agreement provisions.
- B. It is not the intent of this Article II to alter in any manner existing Agreement provisions and practices governing the determination of entitlement to or payment of personal leave days or holiday pay.

Article III. Resolution of Disputes

- A. It is understood that the terms and conditions expressed herein are the product of discussions to fairly and constructively address and resolve the dispute which led to the above cited court case and subsequent arbitration proceeding. Accordingly, such terms and conditions are absolutely non-precedential and except as stipulated in Paragraphs B and C of this Article III neither the Organization nor the Carrier, their officers, employees, attorneys and/or agents will use its application in any way in any future negotiations, arbitration or court proceedings other than to enforce the terms hereof.

- B. The parties agree to file a Joint Stipulation of Dismissal with Prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) in the form of Attachment No. 2 attached hereto within five (5) days of the execution of this Agreement.
- C. Disputes regarding the interpretation of this Settlement will be promptly discussed between the General Chairman and the Director Labor Relations. Disputes not resolved on the property may be progressed for final and binding adjudication pursuant to Section 3 of the Railway Labor Act.

Signed and effective this 13th day of February, 2013, in Chicago, Illinois.

FOR THE BLET:



R.E. Rhodes
General Chairman, BLET

FOR THE UNION PACIFIC RAILROAD:



Alan L. Weed
Director – Labor Relations

Attachment No. 1

EXAMPLE #1

68 engineers with 316 weeks of vacation – 51 full calendar weeks

Flat Line: $316/51 = 6.20$

11 weeks at 10 (6.20×1.6) (110 weeks)
10 weeks at 9 (6.20×1.4) (90 weeks)
10 weeks at 8 (6.20×1.2) (80 weeks)
20 weeks at 7 (flat line rounded) (140 weeks)

$110 + 90 + 80 + 140 = 420$ slots

EXAMPLE #2

102 engineers with 381 weeks of vacation – 51 full calendar weeks

Flat Line: $381/51 = 7.47$

11 weeks at 12 (7.47×1.6) (132 weeks)
10 weeks at 11 (7.47×1.4) (110 weeks)
10 weeks at 9 (7.47×1.2) (90 weeks)
20 weeks at 8 (flat line rounded) (160 weeks)

$110 + 90 + 80 + 140 = 492$ slots

Attachment No. 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, General Committee of Adjustment, Central Region,))	
))	
Plaintiff,))	Civil Action No. 10CV08296
))	
vs.))	Judge Zagel
))	Magistrate Judge Ashman
UNION PACIFIC RAILROAD COMPANY,))	
))	
Defendant.))	

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff Brotherhood of Locomotive Engineers, General Committee of Adjustment, Central Region ("BLET"), and Union Pacific Railroad Company ("Union Pacific"), by and through their attorneys, hereby stipulate and agree that pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), this matter should be dismissed with prejudice, with all costs and attorneys fees to be paid by the party that incurred them.

Dated: February ____, 2013

Respectfully submitted,

s/
One of the Attorneys
for Brotherhood of Locomotive Engineers

Dated: February ____, 2013

Respectfully submitted,

s/
One of the Attorneys
for Union Pacific Railroad Company

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the above and foregoing instrument was properly forwarded to all counsel of record as listed below by:
United States Mail, postage prepaid and sealed;

- United States Certified Mail, postage prepaid and return receipt requested;
- Hand Delivery;
- UPS / Next Day Air;
- Facsimile Transmission;
- Local Rule 5.9 Electronic Filing (U.S.D.C., ND IL); and/or
- Email (pdf)

on February _____, 2013.

Thomas Geoghegan, Esq.
Carol Nguyen, Esq.
Michael P. Persoon, Esq.
Despres Schwartz & Geoghegan, Ltd.
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Chicago, IL 60602