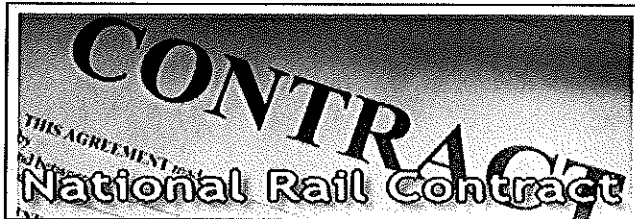


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National Rail Contract: Health care myths

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The International has received questions regarding the health care provisions contained in the National Rail Contract.

The health care insurance plan provided by the National Rail Contract already provides one of the best benefits packages available – and the new contract provides enhancements in

addition to the deductible and co-insurance changes.

Some members have focused on what they consider to be the “cons” of the new provisions. No collectively bargained contract delivers everything each side would like. In fact, the “pros” regarding health care in the National Rail Contract vastly outnumber and outweigh the “cons.”

Pros:

- * Employee health care contribution frozen at \$200 per month through July 1, 2016.
- * Reduction in co-pay for use of urgent care centers to \$20.
- * Reduction in co-pay for use of convenient care clinics to \$10.
- * Enhanced benefit for using “Centers of Excellence” for certain procedures.
- * Annual deductible and co-insurance based on insurance company allowed charges and not the actual charges submitted by the in-network physician or hospital.
- * 100 percent benefits on satisfying the annual out-of-pocket maximum.
- * Radiology management procedures to be implemented to reduce redundant or unnecessary tests adding to health care costs with no penalty to the member if the required authorization is not obtained by the physician.
- * Reduction in the cost of generic medication to \$5 at both retail and mail service.
- * Personalized Medicine to be established allowing for the proper medication at the proper dose the first time for specified illnesses.
- * Pharmacist contact with physician to assure you are receiving proper medication at the most affordable price to you and the plan.
- * You and your physician will have the final decision on medications.

Cons:

- * Establishment of annual deductibles and co-insurance for in-network services.
- * Increase in the co-pay for brand name medications.
- * Emergency room co-pay increased to \$75.

To further assist in understanding the health care provisions in the National Rail Contract,

here is a response to some of the myths raised:

MYTH: I will now have to pay \$50 for cotton balls in the hospital under this proposal.

FACT: The annual deductible and 5 percent co-insurance you pay is on the allowed charges that the insurance company has negotiated with your provider. For example, the doctor charges \$200 for a procedure and the allowed charge by the insurance company is \$65. You would only pay \$65 toward the annual deductible. If the annual deductible has already been satisfied, you pay only \$3.25 as the 5 percent co-insurance up to a maximum of \$1,000.

MYTH: Medco will dictate what drugs I will receive regardless of what my doctor prescribes.

FACT: Medco pharmacists will contact your doctor to discuss the medication prescribed and suggest alternative medications that can save you money without jeopardizing your health. The final decision on medications is made by you and your physician.

MYTH: Railroads are showing record profits and now is the time to get higher general wage increases and not give up anything in return. We must stand firm and fight. This is a bad deal.

FACT: The nation is facing the worst economic downturn since the Great Depression. Legislators at all levels of government are imposing wage and benefit concessions on union and non-union employees and passing laws that eliminate collective bargaining rights. The situation in this round of bargaining is nearly identical to that in 1996 when Arbitration Board No. 559 settled the UTU National Agreement. That arbitration panel ruled that the total economic picture is controlling, not just the railroads' current economic situation at the time. (This decision is reprinted, below, in its entirety.)

The National Rail Contract provides a compounded general wage increase of 18.24 percent – and more than 20 percent when factoring in the certification pay. **THIS IS A GOOD DEAL!**

Arbitration Board No. 559 Decision from 1996:

BEFORE THE ARBITRATION BOARD Constituted Pursuant to a National Mediation Board Arbitration Agreement Made and Entered Into On April 16, 1996 By and Between CERTAIN CARRIERS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE Arbitration Board and No. 559 CERTAIN OF THEIR EMPLOYEES National Mediation REPRESENTED BY THE UNITED Board TRANSPORTATION UNION (National Mediation Board Case Nos. A—12709, A—12710, A—12711, A—12712 and A—12713)

AWARD

Oklahoma City, Oklahoma

May 8, 1996

This award is made in conformance with the Railway Labor Act pursuant to a voluntary arbitration agreement executed by certain carriers represented by the National Carriers' Conference Committee (Carriers) and the employees of these Carriers represented by the United Transportation Union (UTU). That Agreement was executed on April 16, 1996, under the auspices of the Chairwoman of the National Mediation Board. A copy of the Arbitration Agreement is attached as Appendix "A."

John B. Criswell, Robert O. Harris, and Preston J. Moore were duly selected as members of the arbitration board. John Criswell was appointed to serve as Chairman of this Board. Such designations and appointment were made in accordance with the Railway Labor Act and the terms of the parties' Arbitration Agreement.

Background

The UTU represents approximately 40,000 conductors, brakemen, switchmen, engine service personnel and yardmasters, or about 27% of the total number of employees represented in this round of national bargaining involving the Nation's freight railroads.

The railroad companies in this dispute are represented by the National Carriers' Conference Committee.

On November 1, 1994, the NCCC, in accordance with Section 6 of the Railway Labor Act, served notice on the UTU of their demands for changes in the collective bargaining agreements. The UTU responded with their notices beginning in mid-November, 1994, and continuing thereafter for some time.

The first formal meetings occurred on December 14–15, 1994. After several months of negotiations, both parties applied to the NNB for its mediatory services, the tJTU on March 3, 1995, and the Carriers on March 10, 1995. The applications were docketed as NNB Case Nos. A–12709, A–12710, A–12711, A–12712, and A–12713.

Staff mediator Samuel J. Cognata was initially assigned to mediate this dispute. NNB Chairwoman Magdalena Jacobsen ultimately joined the mediation efforts. They met with the parties on numerous occasions throughout the following year. On December 1, 1995, after a great deal of hard and intensive negotiations, the Carriers and the UTU reached an agreement (December 1995 Agreement).

The December 1995 Agreement was placed before the appropriate UTU constituencies for approval. The Agreement was approved by a practically unanimous vote of the General Chairmen. However, when submitted to the membership, the agreement was rejected.

In view of the fact that both parties use the December 1995 Agreement as their departure point, albeit in different directions, a brief description of that agreement seems appropriate.

The term of the December 1995 Agreement covers the 5 year period beginning January 1, 1995 and ending December 31, 1999. Wage adjustments and a guaranteed COLPJ generate a minimum increase of 14.3% over that period. All the wage adjustments were applicable to overmiles, unlike the past two national agreements. A continuing COLA at the end of the agreement, similar to the last round, also was included. The pact provides for periodic health and welfare offsets similar to the previous round's agreement except that the amount offset is cumulative from year to year, as opposed to the one shot annual offset in the last agreement.

Insofar as fringe benefits are concerned, the December 1995 Agreement essentially called for no change in the national health benefits plan, deferred improvements in the national dental plan and established, in 1999, a national vision plan. While benefits under the health plan were not changed, eligibility for benefits was tightened. Similarly, vacation eligibility service requirements were raised. Several vacation plan improvements were agreed to as well.

As to rules changes, UTU obtained certain flowback rights for engine service personnel, enhanced employment opportunities in certain line sale transactions, greater work opportunities for employees on terminal companies, a seniority accumulation requirement, and an opportunity tied to promotion to expedite the rate progression timetable. In addition to a comprehensive moratorium, as provided in the previous round, the Carriers obtained a displacement rule change that accelerated certain employee mark up obligations upon returning to work, and an enhanced customer service rule that offered the promise of tailoring rail service to specific customer needs. Finally, the parties agreed to establish a Wage and Rules Panel 2000 which would study and make recommenda-

tions concerning various pay and work rules.

On April 15, 1996, the NNB, in accordance with Section 5, First, of the Railway Labor Act, offered the parties the opportunity to submit their dispute to arbitration. The UTU accepted the NNB's proffer of arbitration on April 15, 1996, and the Carriers accepted it later on the same date. On April 16, 1996, the parties executed an Arbitration Agreement pursuant to which this Board was created.

The Board commenced hearings on April 30, 1996. The hearings continued on May 1 and 2, 1996. The hearings were held in Washington, D.C. The parties were given full opportunity to present positions, oral testimony, and documentary evidence. The transcript of the proceeding consists of 241 pages. The tJTU submitted statements of position on the issues that included four volumes of supporting exhibits and two addendums. The Carriers submitted 18 exhibits. The parties' collective submissions to this Board amounted to some six feet of paper.

After a full consideration of the evidence and arguments of the parties and upon the entire record, the Arbitration Board makes the following findings and Award.

DISCUSSION AND FINDINGS OF THE BOARD

The Board approaches its task mindful of the extraordinary set of circumstances that makes its determinations so critically important. Every round of bargaining in the rail industry and every dispute that comprises a round affects the vital interests of many groups. Here, however, in addition to the traditional considerations, there are other important factors.

As we look to the immediate past, we are reminded that rail labor and management are recovering from a round of substantial acrimony that required Congressional imposition of settlements for most of the rail unions, including the tJTU. As we look ahead, we recognize that there is no formal agreement yet in place with respect to this round of national bargaining (although one agreement is currently out for ratification). And, finally, as we focus on this particular dispute, we observe an unprecedented set of negotiations: informal as well as formal talks, leadership changes, and not the least, two rejected agreements.

Thus, the impact of this Award and its obvious effect on those that are formally parties to the proceedings, and those that are not, require the exercise of the greatest of care in fashioning our conclusions. We begin by assessing the positions advanced by the parties.

A. The UTU Position

The UTU has reviewed the bargaining history and the ratification results, and concluded that what is needed is more in the way of money and less in the way of rules relief. Rather than 14.3% (compounded) in general wage increases and 7.5% in lump sums as called for in the December 1995 Agreement, the UTU now says that the agreement is the "springboard" and the employees it represents should receive 21% (non-compounded) over three years in general wage increases. As to rules, the reverse psychology applies.

While the December 1995 Agreement provided relief with respect to displacement, customer service adjustments, and eligibility requirements for vacation, dental, and health and welfare benefits, the tJTU proposes that all those items be dropped, including the commitment to establish a National Panel to consider comprehensive

restructuring of the entire pay and rule system.

The justification for these revisions is twofold, (1) that is what it will take to satisfy the needs of the members, and (2) the Carriers' record profits permit greater sharing with UTU employees.

The organization might be right as to what its members want. Whether it is right to give them that is another question. We believe it is not enough to simply claim "more" and be rewarded with more. Good faith bargaining is put at risk by rewarding employees with greater gains for simply saying "no." The automatic rejection of agreements reached by experienced and elected organization representatives without further justification is a destructive practice that cannot be tolerated. We may disagree with the Carriers' remedy in these circumstances, but we do agree with the Carriers that a rejection of an agreement without any persuasive explanation is unacceptable.

The organization responds by saying that the justification for greater increase lies in the record profits reaped by the industry over the last several years, especially last year. The organization's witness analyzes the financial reports and the economic data and advises that the fortunes of the industry have never been better: net income is at a record high; earnings are up all over; operating ratios continue to fall; earnings per share are escalating; return on investment could not be better; etc.

On the other hand, the Carriers presented an imposing array of figures as well, all warning that whatever financial gains have occurred, and they have occurred, they have been modest at best. They point out that even with the so-called "success," the industry lags behind levels of profitability routinely found elsewhere. Furthermore, competition from trucks and other modes continues to exert incredible pressure on prices, capital demands soar unrelentingly, etc.

We think that before jumping into this thicket, we are better off to step back and ask ourselves, what will the exercise gain us? We do not think that "bigness" alone or profits by themselves are persuasive reasons for recommending wage increases. If that were so, the biggest company in the country should have the highest wage rates for its employees. But that is not the case, and it is not the case because it makes no sense.

That is not to say that where employees' wages are suppressed for a period of time, due in part to poor financial returns, a union cannot argue for wage hikes when financial good health returns. But, insofar as the rail industry is concerned, there is no such argument available. The facts are to the contrary. Rail employees enjoy a significant advantage over employees in other industries. That conclusion stands whether one analyzes wage trends, wage levels, or total compensation, compares competitors such as truck, other transportation modes, or industry generally. The figures are in the record, and they are unassailable. As to employees represented by the UTU, as opposed to railroad represented employees generally, the conclusions are identical. The only difference is that the differences are greater.

Thus, in our view, the union's claim that current profit levels justify greater wage increases does not fly.

B. The Carriers' Position

Unsurprisingly, the Carriers' analysis of the post

ratification tea leaves is just the opposite. Simply said, the Carriers urge more work rules relief and less money. The supporting arguments, broadly stated, are that the rejection of the December 1995 Agreement and the organization's subsequent actions demand no less than a merits analysis of all issues. Compromise and delay via referral to a Wage and Rules Panel are no longer tolerable. And as to the merits, the Carriers are entitled to significant relief on a large number of pay and work rules and entitled to that relief immediately. Insofar as wages are concerned, the union should accept less than the December 1995 Agreement for a number of reasons, not the least of which is that delayed implementation of the Carriers' quid — rules relief, justifies diminishment of the union's quo — the wage increases. To do otherwise, argue the Carriers, is to reward the organization and its membership for failing to live up to its responsibilities. The Carriers argue that this practice must be stopped, that the membership be taught a lesson, and the only way to have the message understood is to hit them where it hurts — in the pocketbook.

The Carriers' message has some appeal. After all, history is filled with Commission Reports that analyzed pay and work rules and recommended substantial change. Yet, the results often were to toss the analysis into the trash bin or to make only the most modest adjustments. Similarly, the Carriers' concern with deterioration of the process is a real one and as we commented earlier, one that must be addressed. However, as we spell out in more detail later, our difficulty with the Carriers' recommendations is that they are not warranted in these circumstances. That is harmful in itself. It is even worse at this point with a BLE agreement out for ratification. And prospects for other agreements would be undermined as well.

C. The Board's Award

Having rejected the positions advanced by the parties, we come to where our instincts have told us all along we should be. That is, to endorse in substance the parties' December 1995 Agreement. We do so for a number of reasons.

We first look at the agreement itself and ask ourselves whether it is a fair and reasonable settlement. Both on an overall basis and as to important key provisions. We think this test is met in every respect. It is fair and reasonable. It provides satisfactory wage increases, a mixture of general wage increases and lump sums, that will exceed that received by most American workers and satisfies legitimate expectations. It follows as well a generous last year increase in the 1991 Implementing Agreement of a 4% July 1, 1994 general wage increase and a 2% January 1, 1995 lump sum adjustment. It also addresses certain key needs identified by the union, such as flow back rights, greater work opportunities for employees confined to rosters of terminal companies, and an accelerated entry rate schedule.

For the Carriers, wages are generous but not excessive. Rules relief is provided in an immediate sense by revisions in the displacement obligations imposed on employees returning to work and the modest increases in eligibility requirements for the health and dental plans, as well as vacation benefits.

Employees gain as well through maintenance of a generous health benefits program with the most modest of employee cost sharing arrangements. A new vision plan as well as an expanded dental program provide a generous benefits package.

In the long run, further improvements may come from the

Wage and Rules Panel. The parties had committed themselves to a serious and comprehensive analysis of pay and work rules, and we are persuaded to take them at their word.

Having concluded that the agreement is fair and reasonable insofar as the parties are concerned, but recognizing the precedent the agreement carries with respect to the remaining rail negotiations, we must ask ourselves whether the agreement is fair and reasonable in that context. We think so. We have looked at the agreement in terms of how it compares with respect to industry generally, not just with UTU employees. The answer is the same. It does compare favorably.

In fact, there is no other answer. In light of the BLE ratification effort, we find that to recommend more or less would be destabilizing at best and potentially destructive to this entire round of bargaining. In addition, portions of this agreement developed in discussions with other operating and non—operating groups and found their way into the December 1995 Agreement. In short, we find the agreement reached by the parties to be fair and reasonable in all respects. Given that, we must respect what the parties have done and endorse the December 1995 Agreement. Nothing has changed since the agreement was made except for the non-ratification. There is no warrant for less favorable treatment of employees because of their vote. It is enough to adopt the same terms their leaders found acceptable.

Secondly, there are precedents within this industry, including this organization. We cite several as examples of the many. Only a decade ago the UTU rejected in its ratification process a tentative national rail agreement. At that time, the fireman—manning issue was identified as the offending provision. The dispute was submitted to an Emergency Board, as opposed to an Arbitration Board. The Emergency Board reaffirmed the parties' tentative agreement with little in the way of change.

An even more recent industry precedent is Arbitration Board Award No. 458. That Board endorsed a tentative agreement reached in national negotiations between the Brotherhood of Locomotive Engineers and the NCCC. There, after reviewing all the arguments the BLE advanced as to why the rejected agreement should be substantially revised, the Board was not persuaded to stray from the parties own efforts. In summarizing, it said:

"In short, the realities that confront this Board permit no other conclusion." (Arbitration Board No. 458, Award, p.8)

Although that answer applies here as well, the Board does not stop its analysis here. Rather, the Board also grounds its opinion on some very important considerations it believes are vital if collective bargaining in this industry is to prosper. As contrasted to our other reasons, it is more ephemeral but no less important.

It originates in the observations we noted as to the efforts both parties have made to overcome the bitterness of the last round and to restore vigor to the collective bargaining process. It can truly be said that this round began not with the service of formal notices in November, 1994, but more than a year before that date when informal talks first began.

This effort not only survived leadership changes but was nourished by them. The new UTU team brought with it a determination to depart from the easy but unproductive ways so often taken in the past of letting others resolve the issues and take the

blame. The agreement of the parties contains numerous examples of subjects being addressed and solutions fashioned. It contains as well a new—found commitment to continue this effort through the Wage and Rules Panel.

We marvel at the remarkable turnaround this revitalization has had already on the policy making body of the UTU — its General Chairmen. We contrast their response to the 1994 Denver Agreement with the 1995 December Agreement. A change of that magnitude — from almost complete opposition to practically unanimous support — is not in our view solely attributable to the extra dollars or other adjustments. It signifies something far more fundamental.

We accept the fact that there are those who would point to the membership rejection and the Carriers' clamor for immediate and comprehensive rules relief as more accurate predictors of future behavior. That may be the case. There have to be serious concerns when the industry significantly improves its profitability and the union membership rejects a contract that both provides wage increases above the national norm and preserves their work rules. And concerns as to inequities are bound to rise when executive compensation soars, profits multiply, but employment levels plummet and legitimate needs of workers are ignored.

While that case can be made, we do not believe it will happen here. We do not share the view that this is a permanent fork in the road leading to labor disarray. We think that the rank and file is capable of understanding the leadership's determination to solve the problems of the workplace, not leave it to others. We do not dismiss lightly our concerns with membership rejection generally. Those concerns become acute here in view of the UTU leadership's success in the negotiations and preparations for ratification.

We are confident that both parties are determined to address their problems and reach solutions on their own. The tentative agreement is an example of that. We believe the parties' creation needs nurturing, not second guessing. We cite with approval comments of some distinguished colleagues in a recent airline interest arbitration case. In responding to a position advanced by one party, the Board stated:

"Interest arbitration, bound as it is to existing norms, is an inherently conservative process. Rarely will a party be able to convince an interest arbitrator to make major 'innovative' changes in the status quo, regardless of their merit." (American Airlines and APFA, Interest Arbitration Award, October 10, 1995, pp. 54—55)

This Board, too, believes that these issues should be negotiated by the parties. And, here, that is the case. The parties worked hard and successfully. They forged an agreement. They had the courage to make the lead settlement. They reached an agreement expeditiously, some three months after the current UTU leadership took office. And they had the determination to make an agreement without government intervention. They are entitled to their successes.

AWARD

1. The request of the Carriers dated November 1, 1994, a copy of which is affixed to the Arbitration Agreement as Exhibit B and all other proposals advanced during mediation or before this

Board, are denied in their entirety except as otherwise provided in paragraph 3.

2. The request of the United Transportation Union dated on or after November 16, 1994, a representative copy of which is affixed to the Arbitration Agreement as Exhibit C, and all other proposals advanced during mediation or before this Board, are denied in their entirety except as otherwise provided in paragraph 3.

3. The tentative 1995 agreement, understandings, and attached letters, with certain modifications that are due to the passage of time and the issuance of this decision, are confirmed as our Award. A copy of such agreement and such letters that include these changes is affixed hereto as Appendix D and shall constitute in its entirety this Board's Award. This Board hereby finds that its Award constitutes a full and complete response to the specific questions submitted to it.

4. The Award shall become effective on the date issued and shall remain in effect in accordance with its terms until changed pursuant to the provisions of the Railway Labor Act.

5. The Award shall be final and conclusive upon the parties to the Arbitration Agreement as to the facts determined by the Award and as to the merits of the controversy decided. The Award shall be applied in the same manner as if reached through agreement and signed in the parties' customary manner.

Issued at a meeting of the Arbitration Board on May 8, 1996.

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