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**Consolidated General Committee of Adjustment**

*Union Pacific Railroad Company  
(Eastern & Northwest Districts, former CNW Railway Co)  
Kyle Railroad, Nebraska Central Railroad,  
Portland Terminal Railroad & Wichita Terminal Assoc*

May 24, 2021

*via email only*

Ms J E Powell  
Director, Labor Relations  
Union Pacific Railroad Company  
1400 Douglas Street, Room 710  
Omaha, NE 68179

Dear Ms Powell:

This is in reference to Carrier's recent actions and written directives instructing road employees (through freight, local, traveling switch and way-freight assignments) to operate Company-owned vehicles in order to transport themselves or haul other crews. Carrier issued instructions via the Heartland (April 8, 2021) and Great Lakes (April 27, 2021) Superintendent Bulletins directing road crews to inspect, fuel and operate Company vehicles. This duty has historically been performed by contract transportation and/or yard vans (clerks). For your ready reference, the newly issued Bulletins are as follows:

**Heartland Superintendent Bulletin – Dated April 8, 2021**

**SECTION: Q**

**SUBJECT: TE&Y Employees operating company vehicles**

TE&Y employees may be asked to drive company vehicles to improve operational efficiencies in selected areas as designated by the Superintendent. TE&Y employees are instructed to have their driver's license readily accessible while on Company property. TE&Y Employees will only operate company vehicles while on duty and within their HOS. All Union Pacific employees are required to know and understand Safety Rules - Chapter 74, which identifies how company vehicles are to be operated. Employees not possessing a driver's license should see their manager for exception handling.

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**Great Lakes Superintendent Bulletin – Dated April 27, 2021**

**Section: H**

**Item 10: Crew Change Vehicles**



Employees will utilize rented company vehicles to transport themselves to and from crew change locations at Boone and Clinton. The vehicles will need to be signed out and in after each use. The keys will be located in a specific location at each OD location along with the sign in/out sheet. Employees must report to OD manager or Yardmaster the need for fuel in the vehicles. Employees will need to utilize handheld or portable radios to communicate while utilizing the vehicles. All damage must be reported immediately to a manager. Vehicles must be returned to the designated location prior to tie-up. If arriving on a train close to the end of hours of service, crews must communicate with the dispatcher to arrange a different mode of transportation

The dispute over trainmen driving Company vehicles has re-surfaced over the past several years on the territories under the jurisdiction of GO-953 (including the former GO-225 Committee). Carrier has made multiple attempts to persuade or instruct employees to operate company vehicles. Local management often issues instructions locally or offers a vehicle for crews to operate under the guise that such is allowed under PLB 5912 or was a part of their normal duties. Once apprised of the violation, this office disputed the practice and the on-property attempts would cease. Carrier would then resume the practice of utilizing contract transportation and clerks to transport crews.

Carrier's recent action arose after, and due to, the elimination of clerks and contract drivers who historically had driven crews during their tours of duty. The elimination of these employees placed additional responsibilities upon trainmen – responsibilities which are not specified in any Agreement, including National Agreements.

Carrier has relied primarily on PLB 5912, Award 128 (Eastern District – Yard – North Platte, Nebraska) and supposed past practice to implement the disputed changes. However, PLB 5912 merely allowed yard employees to perform the disputed duty. In the Award, Neutral Lynch found that "*the use of Company-owned vehicles [is] a part of the duties which can be required of yardmen under the provisions of Rule 31.*"

Neutral Lynch specifically addressed Yard Schedule Rule 31 when he stated, "*Based on the entire record before this Board the Board finds that the past practice of some 20 plus years, with the knowledge and acquiescence of the employees, has made the use of Company-owned vehicles a part of the duties which can be required of yardmen under the provisions of Rule 31.*" Rule 31 defines such duties as follows:

*(a) The switching or transfer of all freight and passenger equipment operating exclusively within the yard and/or switching limits.*

*(b) The assembling and breaking-up of all trains or transfers within the switching limits.*

Neutral Lynch also cited the District Court decision which noted the same language, ie, "*in the performance of their duties.*" Clearly Carrier is now trying to expand that language to roadmen in order to require them to drive Company vehicles and to yardmen in order to require them to haul members of other crews. In so doing Carrier has overstepped the clear language of the Award and modified the working conditions of road and yard employees.

Furthermore, Neutral Lynch made his decision in part due to a perceived "past practice" and "acquiescence" because yardmen had been driving vehicles in the past with no objection from the Organization. This statement is not applicable to the current dispute. The Organization has continually and adamantly objected to the practice of road crews operating vehicles and yard crews hauling other crews on both the local and General Committee levels. Correspondence on this issue dates back to 1979, when Carrier first began its attempts to direct road employees to drive Company vehicles. The Organization's position has been clearly stated in writing by General Chairmen Malony, Markgraf, Martin, Babler, Reedy, Leonard, Warth and myself.

Additionally, it is a basic principle in this industry that an individual cannot, by volunteering to perform an act that is in contravention of an Agreement, absolve the Carrier of its responsibility to adhere to the Agreement or negate the Organization's right to police the Agreement. This issue was addressed in Special Board of Adjustment 423, Award 240, wherein Neutral Franden ruled that the Agreement prevailed and could not be modified to include driving simply because an employee volunteered to do so on his/her own behalf.

Public Law Board 5691, Award 35 reiterated this point. Therein, Neutral Criswell ruled that operating a Company vehicle to transport a crew was outside the scope of the employee's duties and a violation of the Agreement despite the employee's willingness to volunteer.

Public Law Board 7210, Award 106 addressed the impropriety of employees hauling other crews. In this decision Neutral Richter ruled that transporting other crews was not within the scope of the duties of an operating employee. Public Law Board 7265, Award 25 agreed: Carrier cannot force employees to operate a company-provided vehicle to self-transport either themselves or additional employees, nor was such a part of the crew's incidental duties as listed in the National Agreement.

Carriers' mischaracterization and use of PLB 5912, Award 128 as its authority to issue the aforementioned instructions to employees operating under the Eastern District, CNW and Northwest District Agreements is improper. Carrier is well aware of the clear delineation between road and yard employees. Carrier has no Agreement or arbitral precedent allowing road crews to operate Company vehicles or yard crews to transport other crews on any territory under the jurisdiction of this Committee.

The parties have never disagreed that road and yard services are materially different forms of work. Because the work is so different, each service has its own set

of work rules. It would be impractical if not impossible to conduct road operations under yard rules or vice versa. Prior to the Dual Rights Agreement, an employee who hired out in road or yard service could not hold seniority rights in the other service. The Dual Rights Agreement eliminated the line between the seniority rosters and gave employees the ability to work in both yard and road service. The Agreement combined seniority rosters and set general parameters on how employees would flow from one service to another. There are multiple Agreement provisions still in effect which protect each class of service from having the other perform their work. These provisions maintain the clear line of demarcation between the classes of service and the Agreements governing each.

The existence of switching limits and Yard Schedules are clear examples of the difference between the two classes of service. Under the Yard Schedule (Agreements), yard employees own all rights to work within the switching limits. Carrier cannot utilize road crews to perform general switching within switching limits where yard crews are employed.

Public Law Board 7210, Award 108 addresses the line of demarcation between yard and road service. In that award, Neutral Richter ruled that there is a material difference between road employees and yard employees when they operate Company vehicles. This Organization has raised concerns about these differences as yard employees operate within a closed yard, at speeds of less than 25 miles per hour. Road employees must operate over public roadways, surface streets, highways and freeways while transporting other crew members.

Furthermore, existing Agreements contain provisions which specifically address the operation of Company-owned vehicles. If operating a Company owned/leased vehicle is, as Carrier alleges, part of the "duties" of all trainmen or yardmen, such provision would not have been included in the Agreements. For your ready reference, these Agreements read as follows:

**September 9, 1988 Crew Consist Agreement, Article I**

B. The Carrier may create single assignment positions (yard utility employee) to expedite and/or assist efficient yard operations. "These assignments will be compensated at the yard foreman-only rate of pay and be governed by applicable yard rules, agreements and practices except that they may work with more than one yard or road crew within switching limits at the direction of proper authority. This service may include operation of a Carrier provided motor vehicle. Utility employees will not be used in relief service.

The June 1, 2000 Memorandum of Agreement for a Footboard Yardmaster position at Roseport, Minnesota contains similar language:

Ms J E Powell  
Page 5  
May 24, 2021

5. The employee assigned may utilize a company vehicle if available, to travel to locations in the Roseport Industrial area when transportation by train and engine may not be practical.

Lastly, Carrier can cite no Road Schedule Rule to support its position. The Organization has continued to object to this practice as Carrier has not only required crews to drive themselves, but now require crews to haul other crews in the Company-provided vehicles. This new practice ignores numerous discussions and communications from this office that such actions would not be tolerated. It is even more disturbing that Carrier has threatened crews with dismissal if they raise any concern about driving, as Carrier perceives such as a refusal to comply with instructions. It appears that Carrier is more concerned with the potential savings reaped from the elimination of Contract Carriers and clerk personnel than it is with Agreement compliance.

The parties have implemented numerous Agreements intended to increase operational efficiencies. The Organization has worked with Carrier to modify existing and older work rules so that rules would conform to today's railroad model. This dispute is no different; the Organization remains willing to negotiate an equitable solution that protects and benefits both parties.

This letter shall constitute the Organizations claim against Union Pacific Railroad over Carrier's refusal to acknowledge that trainmen cannot operate Company-owned/ leased vehicles to transport themselves or other crew members and/or that yard employees cannot haul members of other crews. To resolve this dispute in a comprehensive manner and on a permanent basis, the Organization will seek a final and binding interpretation.

In order to progress this claim in a timely manner, please respond by June 3, 2021. Should Carrier refuse to cease this practice, this office will file a notice of intent to arbitrate the aforementioned claim.

Sincerely,



Luke Edington  
General Chairman

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