

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

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VIA ELECTRONIC AND FIRST-CLASS MAIL

July 21, 2009

All General Chairman Subject to the 1986 National Agreement

Re: Side Letter No. 20 Extra Boards

Dear Sirs and Brothers:

This letter is in response to recent inquiries we have received concerning proper application of Side Letter No. 20 of the 1986 National Agreement ("SL 20"), which established Guaranteed Extra Boards (GEBs), in light of the recent changes to the Hours of Service laws made by the Rail Safety Improvement Act of 1986. Specifically, this is intended to address concerns that the carriers intend to offset statutory mandatory off-duty periods, whether from operation of the "6&2" provision or from the 276-hour monthly cap.

The purpose of this letter is to ensure that everyone applies the same position — that such an offset would be a violation of the Agreement — throughout the Organization. The limits on a carrier's ability to reduce GEB guarantees to account for an extra board engineer's unavailability is provided for in Paragraph (2)(f) of Side Letter No. 20, which states as follows:

"(f) Except as hereinafter provided, if an employee is **suspended** as a result of **disciplinary action, lays off at his own request with permission, is not available for personal reasons, or misses a call**, earnings lost as a result thereof will be deducted from the monthly guarantee. Unless the needs of the service dictate otherwise, employees assigned to an extra board which protects yard service exclusively may lay off for a maximum of two days per month without the earnings lost as a result thereof being deducted from the monthly guarantee."

(emphasis added)

The canons of contract construction can serve in several ways to defeat the industry's desire to use the RSIA to justify reducing GEB guarantees during periods of unavailability due to the new mandatory rest periods. First, the rule lists the discrete circumstances that specifically allow the Carrier to offset a guarantee. **Unavailability due to the hours of service is not one of them.** Under the doctrine of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another), the fact that the rule lists one set of circumstances under which the guarantee

All General Chairman Subject to the 1986 National Agreement
July 21, 2009
Page 2

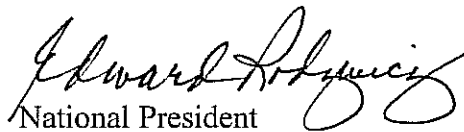
may be offset means that no other circumstances may be implied, which is what the carriers are attempting to do with HOS unavailability.

Second, the rule is prefaced with an anticipated exception (*Except as hereinafter provided ...*), which permits yard engineers to lay off up to two days per month with no offset. The above described *expressio unius* principle also means that where one or more exceptions to a rule are set forth, no others may be implied. Thus this paragraph, on its face, prohibits the carriers from using any HOS-driven unavailability as a basis for making any deductions from GEB guarantee payments.

When confronted with this issue concerning any SL 20 extra boards under your jurisdiction, your position should be that the language of the Side Letter plainly does not permit any deductions for unavailability beyond what is specifically set forth therein. If you have any questions about how to assert this position, please contact the National Division for further guidance before taking a position on this issue. If your schedule contains a rule that speaks to this issue in a different manner, and although the power to interpret your schedule resides with you, we would be happy to provide whatever assistance we can in formulating your schedule-specific argument.

With warmest personal regards, I remain

Fraternally yours,


National President

cc: Advisory Board
SLB Chairmen

EWR:tap