

STB FD-30400 (SUB 21) 7-28-92 COMPLAINT VOL 2 12 OF 12

period occurred in June of 1985, when there was merely a 16.07% decline (minus the 5%) and the high occurred in November of 1985 when there was a 97.06% decline.

Several problems exist in this claim. First, it is evident that there were certain specific functions and work which were transferred from Carrier to the Southern Pacific Transportation Company. Those were specified and spelled out in Carrier's notice to the organization in accordance with the Agreement. Certain employees were permitted to transfer and follow their position.

The organization alleges that certain other work was also transferred to the Southern Pacific Transportation Company upon the closing of the Brisbane office of Carrier. However, there is no evidence whatever to indicate precisely what amount of work the Organization claims was indeed transferred. The lack of evidence makes it impossible for the Arbitrator to determine that there was indeed sufficient work transferred without the concomitant opportunity for employees to follow their work. There is no evidence, and this is particularly significant, of the establishment of any new positions beyond those indicated by Carrier after the closing of the Brisbane office. The Organization relies on Article IV Section 1 (a) of the January 7,

1980 Agreement in support of its claims. Unfortunately, those provisions which deal with an employee following his work or being permitted a severance allowance rely on facts which are not evident in this matter. Carrier has submitted ample evidence that its business declined precipitously during the year 1985. In addition there is no evidence that any positions were established at the Southern Pacific Transportation Company to which the furloughed employees from Brisbane could aspire. Carrier supported this practical application of the Agreement by providing copy of former B. R. A. C. General Chairman T. J. Dielh's October 5, 1982 letter interpreting the Agreement wherein he stated: "...parties to the September 16, 1971 Agreement Article IV Section 1 (a)...since no positions are being established, an employee cannot follow his work..." Clearly, Paragraph 3 of Article IV Section 1A which provides a severance allowance is not applicable since that provision relies in principal part on the requirement of an employee to move his residence in order to follow his position or work. There was no requirement that an employee from Brisbane going to San Francisco, even if a position were available, would be required to move his residence (the distance was not that great).

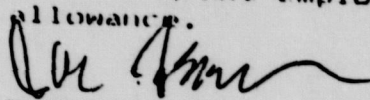
In summary, therefore, it is apparent that the Organization has not presented facts which would indicate that there was work

indeed transferred from Carrier to its parent in San Francisco, which accrued to the incumbents who were laid off in Brisbane. In addition, Carrier has submitted significant evidence with respect to its decline in business. It is also apparent that this entire matter may be characterized as the parent company taking back work from its own subsidiary. Such actions have long been held to be proper and do not constitute "coordinations" or triggering mechanisms for various protective benefits (see S.R.A. 605, Awards 390, 414, 420 and others). There is, in fact, no Rule support for Claimant's position. However, it must be noted that it is extremely desirable that the employees who were laid off at Brisbane and furloughed should be given priority consideration for future openings at the Southern Pacific Transportation Company in the San Francisco General office. The Arbitrator cannot mandate such action but can recommend it strongly.

For the foregoing reasons, however, the Claims in this instance do not have merit and they must be denied.

AWARD

Carrier did not violate the Agreement by failing to grant employees the right to follow work from Carrier to the Southern Pacific Transportation Company or in lieu thereof grant employees a separation allowance.



I. M. Lieberman, Arbitrator

Stamford, Connecticut

November 30, 1987

SERVICE DATE

FEB 9 1989

INTERSTATE COMMERCE COMMISSION

DECISION

Finance Docket No. 30400 (Sub-No. 21)

SANTA FE SOUTHERN PACIFIC CORPORATION -- CONTROL -- SOUTHERN
PACIFIC TRANSPORTATION COMPANY

Decided: January 25, 1989

BACKGROUND

In a decision in this proceeding served October 10, 1986, Santa Fe S.P. Corp. - Con. - Southern Pacific Transp. Co., 3 I.C.C.2d 709 (APPE), we denied the proposed merger of The Atchison, Topeka and Santa Fe Railway Company (AT&F or Santa Fe) and the Southern Pacific Transportation Company (SPT). The Santa Fe Southern Pacific Corporation (SFSP) had owned the stock of SPT since December 1983, when the Commission approved use of an independent voting trust to hold the stock of the SPT, enabling the holding companies of the two railroads to merge. Once the proposed merger of the railroads was denied, and in order to avoid a violation of the Interstate Commerce Act, 49 U.S.C. 11343,¹ SFSP was required to divest its interest in either Santa Fe or SPT. SFSP chose to sell the stock of the SPT to Rio Grande Industries (Rio Grande), and by decision served September 13, 1988, Rio Grande Industries, Inc., SPTC Holding, Inc., and the Denver and Rio Grande Western Railroad Company - Control - Southern Pacific Transportation Company, I.C.C.2d (Rio Grande), that acquisition was approved. The voting trust was dissolved on October 13, 1988, when the Rio Grande-SPT acquisition was consummated.

During the Rio Grande proceeding, the Railway Labor Executives' Association (RLA) and the International Brotherhood of Teamsters (IBT) argued that certain SPT and Santa Fe employees had been adversely affected by actions of their employers taken in anticipation of the Santa Fe-SPT merger. In Rio Grande, the unions urged that the relationship between the Rio Grande proceeding and the already denied APPE case made both railroads subject to the labor protective conditions at 49 U.S.C. 11347. We concluded that we had no authority in connection with the Rio Grande acquisition to mandate protective conditions as sought by the unions. Slip op. at p. 95. We stated, however, that due to our continuing jurisdiction over the voting trust, SFSP was in a different position than was Rio Grande. We stated our belief that it was within our power to afford employees adversely affected by actions of SFSP labor protection in this docket. By notice served September 27, 1988, in this subnumbered proceeding, we sought comments on whether the Commission has the authority to impose such labor protective conditions, whether such conditions are warranted here, and, if so, how the conditions should be framed.

In response to our notice, we received comments from RLA, SFSP and SPT and replies from the same three parties.² RLA has

¹Under 49 U.S.C. 11343, consolidation, merger or control of two or more carriers may be carried out only with the approval and authorization of the Commission.

²The Commission has also received a number of letters from current or former employees of the Santa Fe or SPT which recount personal experiences with lay-offs from positions on the railroads as far back as 1980. Letters were apparently not submitted in response to our designated notices and in

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Exhibit F

Finance Docket No. 30400 (Sub-No. 21)

not attempted to provide any new evidence to lay a factual basis for concluding that employees were adversely affected by actions taken in anticipation of the proposed Santa Fe-SFT merger. Instead, RLEA urges the Commission to impose protective conditions which would apply if any employees were so affected.

In responding to our question whether the Commission has the authority to impose labor protective conditions in these circumstances, RLEA argues not only that we have the authority, but that under 49 U.S.C. 11347 we are required to do so. It contends that the voting trust, AT&T, Rio Grande and the divestiture constitute one continuous section 11343 proceeding for which labor protection is mandatory under section 11347. SFSP and SFT argue, however, that such an approach is unprecedented, because what is sought is the imposition of employee protection on a transaction that has been denied, i.e., the SFSP consolidation. The carriers state that our authority to impose conditions hinges upon approving a transaction. The denial of a transaction, they argue, affords no basis for imposing conditions under section 11347. They agree, however, that we would have authority over violations of the voting trust.

RLEA further argues that employee protection is warranted because employees have in fact been adversely affected by actions taken by SFT and/or SFSP in anticipation of consolidation. RLEA has submitted verified statements (that had been submitted in 1984 in SFSP) from two SFT employees who argue that certain operating adjustments made by SFT were in anticipation of consolidation with Santa Fe. SFSP and SFT argue that there is no new evidence that SFT employees were affected by SFSP ordered actions, and that the evidence presented does not support a claim of adverse effects.

RLEA urges imposition of the New York Dock conditions,¹ which set out the minimum statutory protection afforded employees affected by a consolidation. RLEA proposes the procedural approach taken in the consolidated Finance Docket No. 31250, National Railroad Passenger Corporation -- Conveyance, and Finance Docket No. 31259, Central Vermont Railway, Inc. -- Petition for Exemption (not printed), served August 9, 1988. That is, we need not find that employees were adversely affected but would simply impose the New York Dock conditions. Thus, any employee believing himself to be adversely affected would pursue the matter through the prescribed process.

DISCUSSION AND CONCLUSIONS

In general, employee grievances unrelated to the Rio Grande acquisition of SFT are governed by the grievance procedures contained in collective bargaining agreements with their respective employing carriers. Any adverse effects upon SFT employees causally related to Rio Grande's acquisition of SFT are of course covered by the employee protective conditions we imposed upon our approval of that transaction. Displacement of employees unilaterally undertaken by AT&T or SFT management even if it is in anticipation of the disapproved SFSP acquisition of control over SFT would be governed by collective bargaining agreements between those carriers and their respective employees. Although in initiating this further inquiry we believed there

the time limitations set in our notice. These letters will be added to the correspondence section of the public docket in this proceeding but will not otherwise be considered here as they were not served on the parties. To the extent these individuals might be eligible for relief, they would need to pursue it through some other channel such as that outlined later in this decision.

¹New York Dock Ry. - Central - Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

might be some basis for imposing labor protection obligations upon SFSP for any actions that it ordered be taken by ATSF or SPT management in anticipation of consolidation which adversely affected the employees of either carrier, we now conclude that there would be no basis for imposing labor protection on SFSP even for merger anticipatory actions it could be shown to have ordered ATSF to take because SFSP was at all times lawfully in control of ATSF as a result of a transaction which did not require Commission approval. As to grievances by ATSF employees against SFSP-ordered actions, the appropriate avenue for redress of such grievances, like grievances arising out of actions unilaterally taken by ATSF management, is to be found in the procedures contained in collective bargaining agreements between ATSF and its employees.

This leaves only the question of what relief, if any, we may appropriately afford SPT employees for the adverse effects that can be shown to be causally related to actions ordered by SFSP to be taken by SPT management in anticipation of the consolidation of the ATSF and SPT under the control of SFSP. Such actions by definition could only have been ordered during the period SFSP had the power to control decisions of SPT and prior to disapproval of their application to control SPT, *i.e.*, during the period December 23, 1963 to October 10, 1966.

We agree with SFSP and SPT that no basis has been shown here to impose conditions pursuant to section 11347. Based upon the comments and replies filed and upon further consideration, we conclude that we do not have authority to impose labor protection as a condition of our action disapproving a merger proposal. Section 11347 speaks in terms of approved transactions, and the New York Dock conditions and their variants, which provide for preservation of seniority, negotiated implementing agreements and arbitration, and severance pay, are clearly designed to cushion the adverse impacts on labor of consummated transactions.

During the period from December 23, 1963, to October 10, 1966, any control exercised by SFSP over SPT was subject to Commission jurisdiction over the voting trust into which SPT stock was placed. If any actions adverse to employees are shown to have been ordered by SFSP in anticipation of consolidation and in violation of the provisions of 49 U.S.C. 11343, which prohibit common control absent Commission approval, the adversely affected individuals have a remedy as provided by 49 U.S.C. 11705.

SPT employees who believe they were harmed by actions taken in anticipation of the proposed SPT-ATSF consolidation would be required to show, in addition to causation, that SFSP exercised unlawful control of SPT, in violation of the Act or the conditions in our approval of SFSP's voting trust for SPT stock. Persons injured by a carrier violating the Act or an order of the Commission may file suit, and the carrier is liable for the damages sustained as a result of those violations. 49 U.S.C. 11705. In such a suit any adversely affected employees would have an opportunity to prove the necessary elements of the action -- that SFSP took actions that violated the Act, and that those actions resulted in harm to the employees. We do not think that the essentially factual matters that would be in issue in a civil proceeding are such that would require the exercise of

We stated, in Rio Grande, slip op. at page 96, that we would entertain comments concerning employees who were alleging harm as a consequence of actions taken or orders issued by SFSP in anticipation of merger. This proceeding was not intended to encompass actions that may have been taken by SPT or ATSF independently. As discussed earlier in this decision any adverse effects of such actions may be covered by existing collective bargaining agreements. SPT, in its reply comments, refers to several grievances that have already been decided concerning such allegations.

administrative expertise, so as to invoke the doctrine of primary jurisdiction. See Hansen v. Norfolk & Western Ry. Co., 609 F.2d 707 (7th Cir. 1982); Chicago & NW Transp. Co. - Abandonment, 3 I.C.C.2d 729 (1987), affd. sub nom. Int. Bd. of Elec. Workers v. ICC, No. 87-1629 (D.C. Cir., decided November 25, 1988). This is the course of action provided by Congress to redress any financial harms caused by unlawful actions.

For these reasons, we will discontinue this proceeding.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. This proceeding is discontinued.
2. This decision is effective on the date served.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Vice Chairman Simmons and Commissioner Lamboley dissented in part with a separate expression.

(SEAL)

Moreta R. McGee
Secretary

VICE CHAIRMAN SIMMONS, dissenting in part:

I disagree with the majority's somewhat perfunctory treatment of the Commission's responsibility to enforce the Interstate Commerce Act and its own orders. I believe the Commission should take initial cognizance of any employee action arising out of a violation of the voting trust. Even if invocation of primary jurisdiction is not clearly required, the Commission should at least indicate its intention rigorously to enforce its own decisions and the requirements of the Act.

COMMISSIONER LAMBOLEY, dissenting in part:

While denial of specific relief under the ICA as requested; i.e., imposition of NY Dock conditions under §11347, may be appropriate, in my view, it is not appropriate to merely leave the potential issues as subject matter for §11705 civil action remedy in the Courts.

There is no sound reason for the Commission to abdicate its primary jurisdiction to judicial forums. To do so is a disservice to the transportation interests of both the rail

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carrier, and the rail employees alike.' Causes of actions which may be brought against SPSP must of necessity involve actions undertaken by SPSP under theegis of the Commission established voting trust. The primacy of Commission jurisdiction is tied to the trust. Claims made will require construction and interpretation of the trust and conduct thereunder. Such complaints are cognisable by the Commission under §11701.²

In my view, the needs for expertise, efficiency and consistency of disposition auger well for the claim and exercise of primary jurisdiction by the Commission in complaint cases under §11701 for any employment claims as may be made under the voting trust.

¹ This approach also lacks consistency with the strength and breadth of Commission jurisdictional claims with respect to other employment conditions under §10901 (discretionary) and §11347 (mandatory), and review of arbitration awards on employment issues, e.g., Lace Curtain cases AB-1 (Sub-Nos. 83 and 113) aff'd sub nom IBEW v. I.C.C., ___ F.2d ___ (1989).

² To characterize the potential causes as fact bound and not requiring Commission administrative action is strikingly reminiscent of MC-177 cases, in which the Commission has deferred to the courts in rate/tariff undercharge cases, notwithstanding the consequence of considerable confusion and inconsistent results.

1 DECLARATION OF SERVICE BY MAIL

2 I, Lee J. Kubby, say and declare:

3 I am a citizen of the United States, over eighteen
4 years of age, and not a party to the within action. My
5 business address is 755 Page Mill Road, Suite A180, Palo
6 Alto, California 94304. I am an attorney at law licensed by the
7 state of California.

8 That on

9 June 2, 1989

10 I served the attached:
11 SECOND AMENDED COMPLAINT

12 via United States First Class Mail on the following party of
13 record:

14 ROBERT S. BOGASON
15 SOUTHERN PACIFIC TRANSPORTATION COMPANY
16 One Market Plaza, Room 837
17 San Francisco, CA 94105
18 Telephone: 415-541-1786

19 PATRICK W. JORDAN
20 WAYNE M. BOLIO
21 MCLAUGHLIN AND IRVIN
22 111 Pine Street, Suite 1200
23 San Francisco, CA 94111-5109
24 TELEPHONE: 415-433-6330
25 Kathleen S. King, Esq.
26 Henning, Walsh & King
27 100 Bush Street, Suite 440
28 San Francisco, CA 94104
TELEPHONE (415) 981-4400

29 JOHN H. ERNSTER
30 One Santa Fe Plaza
31 5200 E. Sheila Street
32 Los Angeles, CA 90040
33 TELEPHONE: 213 267-5605
34 James M. Darby
35 TCIU
36 3 Research Place
37 Rockville, MD 20850

38 and by then sealing said envelope and depositing same into
39 the United States Mail, postage fully prepaid.

40 I declare under penalty of perjury that the foregoing is
41 true and correct.

42 Executed on June 2, 1989, at Palo Alto, California.

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LEE J. KUBBY

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 BEFORE THE HONORABLE D. LOWELL JENSEN, JUDGE
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6 SIEU MEI TU AND JOSEPH Z. TU,)
7 PLAINTIFFS,) NO. C-87-1198 DLJ
8 VS.) WEDNESDAY, JULY 26, 1989
9 SOUTHERN PACIFIC TRANSPORTATION)
10 COMPANY, ET AL.,) SAN FRANCISCO, CALIFORNIA
11 DEFENDANTS.)

12 REPORTER'S TRANSCRIPT OF PROCEEDINGS
13

14 APPEARANCES:
15 FOR PLAINTIFFS:

LEE J. KUBBY, ESQUIRE
755 PAGE MILL ROAD, STE. A180
PALO ALTO, CA 94304

16
17
18 FOR UNION DEFENDANTS:

JAMES M. DARBY, ESQUIRE
ASSISTANT GENERAL COUNSEL
TRANSPORTATION COMMUNICATIONS
INTERNATIONAL UNION
3 RESEARCH PLACE
ROCKVILLE, MARYLAND 20850

21 KATHLEEN S. KING, ESQUIRE
22 HENNING, WALSH & KING
23 100 BUSH STREET, STE. 440
SAN FRANCISCO, CA 94111

24 REPORTED BY:

DIANE E. SKILLMAN,
OFFICIAL COURT REPORTER
25

1130

1 WEDNESDAY, JULY 26, 1989

10:00 A.M.

2
3 THE CLERK: CALLING CIVIL MATTER 87-1198, SIEU TU
4 VERSUS SOUTHERN PACIFIC.

5 COUNSEL, COME FORWARD AND STATE THEIR APPEARANCES.

6 MR. DARBY: GOOD MORNING, YOUR HONOR, JAMES DARBY FROM
7 ROCKVILLE, MARYLAND FOR THE DEFENDANT UNION.

8 MS. KING: KATHLEEN KING ON BEHALF OF THE DEFENDANT
9 UNION.

10 MR. KUBBY: LEE KUBBY FOR THE PLAINTIFF.

11 THE COURT: MR. DARBY, DO YOU WANT TO MAKE ANY FURTHER
12 STATEMENT ON THIS ISSUE?

13 MR. DARBY: YES, I WOULD, YOUR HONOR.

14 WE, ACCORDING TO YOUR INSTRUCTIONS IN YOUR LAST ORDER,
15 WE HAVE RESUBMITTED OUR MOTION FOR SUMMARY JUDGMENT IN THIS
16 MATTER ON THE BASIS THAT THE PLAINTIFF HAS SIMPLY FAILED TO
17 DEMONSTRATE BEYOND A MERE CONCLUSARY ALLEGATIONS THAT THE UNIONS
18 HAS BREACHED ITS DUTY OF FAIR REPRESENTATION, AND THE PLAINTIFF
19 HAS FAILED TO RAISE ANY GENUINE ISSUE OF MATERIAL FACT IN THIS
20 REGARD.

21 AS YOU KNOW, YOUR HONOR, THE PLAINTIFF WAS LAID OFF BY
22 THE EMPLOYER ALONG WITH SEVEN OTHER EMPLOYEES, INCLUDING ONE OF
23 OUR UNION OFFICERS. THE UNION FILED GRIEVANCES ON THE
24 PLAINTIFF'S BEHALF AND ON BEHALF OF ALL THE LAID OFF EMPLOYEES
25 SEEKING CERTAIN PROTECTIVE BENEFITS FOR THEM UNDER THE

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1 COLLECTIVE BARGAINING AGREEMENT.

2 THE UNION TOOK THE GRIEVANCE ALL THE WAY TO ARBITRATION
3 UNDER THE RAILWAY LABOR ACT AND THE ARBITRATOR RULED THAT THE
4 EMPLOYER HAD THE RIGHT TO LAY OFF THESE EMPLOYEES.

5 AS YOU KNOW, THE STANDARD FOR DEMONSTRATING BREACH OF
6 THE DUTY OF FAIR REPRESENTATION IS WHETHER OR NOT THE UNION'S
7 CONDUCT WAS ARBITRARY, DISCRIMINATORY, OR IN BAD FAITH, AND THE
8 PLAINTIFF HAS FAILED TO PRODUCE ANY EVIDENCE TO DEMONSTRATE THAT
9 IT HAS MET THIS VERY STRINGENT STANDARD.

10 AGAIN, THE UNION FILED GRIEVANCES ON THE PLAINTIFF'S
11 BEHALF, TOOK THE CASE ALL THE WAY TO ARBITRATION, WHICH IT
12 DIDN'T HAVE AN OBLIGATION TO DO UNDER THE FAIR REPRESENTATION
13 STANDARDS. THIS WAS A TIMELY AND A COSTLY PROCESS FOR THE
14 UNION. UNFORTUNATELY WE LOST IN ARBITRATION. WE DID, HOWEVER,
15 GET A RULING BY THE ARBITRATOR IN WHICH HE RECOMMENDED THAT THE
16 SP HIRE THOSE LAID OFF BRISBANE EMPLOYEES OR GIVE THEM
17 PREFERENCE TO HIRE.

18 OUR LOCAL UNION OFFICER RECEIVED THE IDENTICAL
19 TREATMENT AS THE PLAINTIFF DID IN THIS CASE. HE WAS ALSO LAID
20 OFF. THE UNION HAS SUCCESSFULLY HANDLED GRIEVANCES ON THE
21 PLAINTIFF'S BEHALF IN THE PAST, THEREFORE, SHOWING NO HOSTILITY
22 OR MALICE, AND PLAINTIFF HERSELF ADMITTED IN DEPOSITION
23 TESTIMONY THAT SHE ACKNOWLEDGED THE UNION WAS TRYING TO HELP HER
24 IN HANDLING THESE CLAIMS.

25 SO REALLY THE CRUX OF THIS CASE IS THAT THE PLAINTIFF

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1 IS UNHAPPY WITH THE FINAL AND BINDING DECISION IN ARBITRATION,
2 AND BASICALLY FEELS THAT THE UNION JUST DIDN'T DO A GOOD ENOUGH
3 JOB. WELL, THE UNION WOULD LIKE TO GO ON RECORD AS SAYING WE
4 ARE ALSO UNHAPPY WITH THE DECISION. WE DID EVERYTHING WE COULD,
5 HOWEVER, TO PROTECT ALL OF THE EMPLOYEES' INTEREST.

6 THE PLAINTIFF'S MERE UNHAPPINESS WITH THE OUTCOME OF
7 THE ARBITRATION DECISION AND A FEELING WE DIDN'T DO A GOOD
8 ENOUGH JOB, SIMPLY DOESN'T RISE TO THE LEVEL OF A BREACH OF A
9 DUTY OF FAIR REPRESENTATION.

10 JUST A COUPLE OF POINTS, YOUR HONOR, ON THE PLAINTIFF'S
11 OPPOSITION PAPERS, THEY SIMPLY FAIL TO RISE ANY MATERIAL ISSUE
12 OF FACT ON DISPUTE.

13 FIRST OF ALL, THEY PRESENT NO EVIDENCE TO CONTRADICT
14 ANY OF THE FACTS PRODUCED BY THE UNION IN THEIR MOTION PAPERS.
15 ALL THEY DO PRIMARILY IS CHALLENGE THE RELIABILITY OF OUR
16 EVIDENCE, WHICH UNDER CELOTEX, THE SUPREME COURT CASE, IS NOT A
17 BASIS FOR OVERCOMING A MOTION FOR SUMMARY JUDGMENT.

18 AND INDEED THE PLAINTIFF'S OWN DECLARATION, WHICH THEY
19 HAVE INCORPORATED INTO THEIR COURT PAPERS, HAS NOTHING IN THERE
20 AT ALL ABOUT ANY MISHANDLING BY THE UNION IN THE CASE.

21 IN ANY EVENT, THE ISSUES WHICH THEY ARE ATTEMPTING TO
22 RAISE AS MATERIAL ISSUES OF FACT ARE SIMPLY IMMATERIAL TO THE
23 OUTCOME OF LITIGATION. FOR EXAMPLE, THE FAILURE TO PRODUCE
24 CERTAIN EVIDENCE OR THE FAILURE TO MAKE CERTAIN OBJECTIONS AS
25 SET FORTH IN OUR BRIEF DOESN'T RISE TO THE LEVEL OF A BREACH TO

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1 THE DUTY AND ALSO A FAILURE TO CONSULT WITH A PLAINTIFF DOES NOT
2 CONSTITUTE A BREACH OF THE DUTY.

3 SO, AS A SUBSTITUTE FOR SPECIFIC EVIDENCE, THEY ARE
4 MERELY RELYING ON CONCLUSARY ALLEGATIONS IN THE BRIEF WHICH ARE
5 SIMPLY NOT A BASIS FOR OVERCOMING A MOTION FOR SUMMARY JUDGMENT,
6 AND WE WOULD RESPECTFULLY RESUBMIT THAT THIS MOTION BE GRANTED.

7 THE COURT: YOU ALSO MOVE TO STRIKE THOSE REPLETED
8 PORTIONS OF THE COMPLAINT THAT REALLY DON'T HAVE YOU AS A PARTY?

9 MR. DARBY: YES, EXACTLY. WE ONLY DID THAT, YOUR
10 HONOR, WE PRESUME THAT THE DIRECTIVE TO AMEND THE COMPLAINT WAS
11 TO REDUCE THE RATHER LENGTHY PLEADINGS TO SOMETHING THAT WAS A
12 LITTLE MORE MANAGEABLE, GIVEN THE FACT THAT YOU HAD DISMISSED
13 THE RAILROAD DEFENDANTS FROM THE CASE.

14 THE COURT: MR. KUBBY, MR. KUBBY, LET ME ASK YOU TO DO
15 THIS: AS YOU FOCUS ON THIS, I THINK AS FAR AS THE MOTION THAT
16 IS BEFORE THE COURT, IN TERMS OF YOUR ARGUMENT, I WOULD ALSO
17 LIKE YOU TO IDENTIFY THE EVIDENCE THAT SUPPORTS THAT.

18 WHERE WE ARE NOW, OF COURSE, IS THAT YOU ARE THE
19 PLAINTIFF AND YOU HAVE GOT THE BURDEN TO MEET AND YOU HAVE GOT
20 TO HAVE A SHOWING OF SOME EVIDENTIARY SUPPORT FOR YOUR BURDEN,
21 THAT IS OTHER THAN THE PAPERS THEMSELVES, OTHER THAN YOUR
22 PLEADING, AND OTHER THAN CONCLUSIONS.

23 IF YOU COULD, AS YOU ADDRESS THIS, TELL ME WHERE YOU
24 THINK THERE IS ANY EVIDENCE TO SUPPORT THE ASSERTIONS YOU MAKE.

25 MR. KUBBY: MY UNDERSTANDING IS, YOUR HONOR, THAT IT

1 IS, THAT THE PLEADINGS ARE NOT EXCLUDED, BUT THE CELOTEX CASE
2 SAID JUST THE PLEADINGS ALONE IN THEIR CONCLUSIONS WERE NOT
3 SUFFICIENT.

4 THE COURT: THAT'S CORRECT. YOU HAVE TO POINT TO ME
5 WHO CAN TESTIFY TO SOMETHING, NOT JUST SAY I SAID THAT IT CAN BE
6 DONE. THE WHOLE POINT NOW IS TO SHOW ME, OKAY, I HAVE SOME
7 WITNESSES OUT THERE GOING TO DO THIS.

8 MR. KUBBY: ALL RIGHT.

9 ATTACHED TO THE COMPLAINT AND ALSO ATTACHED TO THE
10 DECLARATION FILED BY THE UNION, IS THE ARBITRATION DECISION BY
11 ARBITRATOR LIEBERRMAN, WHEREIN THE UNION UNDERTOOK TO REPRESENT
12 THE PLAINTIFFS' INTEREST REGARDING HER TERMINATION AND IN THAT
13 DECLARATION ITSELF -- IN THE ARBITRATION DECISION ITSELF IT
14 DEMONSTRATES THAT THE UNION PRODUCED NO EVIDENCE REGARDING RIGHT
15 OF THE COMPANY TO TERMINATE FOR DECLINING BUSINESS.

16 ALSO ATTACHED TO THE COMPLAINT, TO THE NEWLY AMENDED
17 COMPLAINT IS THE DECISION BY THE INTERSTATE COMMERCE COMMISSION
18 WHICH SHOWS THAT THERE IS, THAT THERE WAS AN ISSUE AS TO THE
19 RAILROAD'S FAILURE TO ADHERE TO THE TRUST AGREEMENT WHEREIN
20 ACTION WAS TAKEN IN ANTICIPATION OF THE CONSOLIDATION OF THE
21 RAILROAD, AND THAT ALTHOUGH THE ICC REQUESTED ALL OF THE PARTIES
22 TO RESPOND, THAT THE UNION ITSELF DID NOT RESPOND, ALTHOUGH
23 INDIVIDUAL MEMBERS OF THE UNION DID FILE DECLARATIONS INDICATING
24 THAT THERE WAS A PROBLEM. THE PLAINTIFF WAS UNAWARE OF THE ICC
25 RULE.

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1 ALSO BEFORE THE COURT IS THE COURT'S TRANSCRIPT WHEREIN
2 ON THE SUMMARY JUDGMENT MOTION OF THE RAILROAD FOR JUDGMENT,
3 THEY ARGUED AND PLED BEFORE THE COURT THAT THE PLAINTIFFS'
4 POSITION REGARDING HAVING BEEN PREJUDICED BECAUSE OF HER RACE,
5 SEX, AND NATIONAL ORIGIN WAS SATISFIED BY THE FACT THAT THEY HAD
6 HAD AN ECONOMIC DECLINE IN BUSINESS.

7 ON THE MOTION FOR RECONSIDERATION, THE UNION STOOD MOOT
8 WHEN THAT ARGUMENT WAS MADE -- NO, NO. I AM SORRY. THE
9 RAILROAD ARGUED THAT IF THE PLAINTIFF HAD A BEEF, WHICH SHE
10 ALLEGES BOTH IN HER DECLARATIONS AND IN THE EVIDENTIARY MATTERS
11 SET FORTH IN HER PLEADINGS, THAT THE ACTION TAKEN BY THE
12 RAILROAD WAS PROHIBITED BY REASON -- IT WAS TAKEN IN
13 ANTICIPATION OF THE CONSOLIDATION OF THE TWO RAILROADS, THE
14 PLAINTIFF WAS TO REQUIRED TO PROCEED TO THE INTERSTATE COMMERCE
15 COMMISSION, AND HAD NOT EXHAUSTED ITS ADMINISTRATIVE REMEDIES
16 AND THEREFORE COULD NOT CONTINUE THIS LAWSUIT. THE COURT
17 GRANTED JUDGMENT ON THAT BASIS TO THE RAILROADS.

18 ON THE MOTION FOR RECONSIDERATION, THE UNION PRESENT
19 DURING THAT ARGUMENT FAILED TO ADVISE EITHER THE COURT OR THE
20 PLAINTIFF THAT, IN FACT, THERE HAD BEEN REPRESENTATION OF THE
21 PLAINTIFF BEFORE THE INTERSTATE COMMERCE COMMISSION, AND THAT
22 THE INTERSTATE COMMERCE COMMISSION PERMITTED THE FILING OF A
23 PRIVATE LAWSUIT BY THOSE AGGRIEVED OUTSIDE OF THE ADMINISTRATIVE
24 PROCESS.

25 AS FAR AS THE UNION IS CONCERNED, IN THE UNION PAPERS,

112,

1 THE UNION ADMITS OR CLAIMS IN ITS STATEMENT AS TO MATERIAL FACTS
2 THAT THE ISSUE AS TO WHETHER OR NOT THE PLAINTIFF WAS ENTITLED
3 TO TOPS PROTECTION IS A MATERIAL ISSUE OF THIS CASE, AND ALLEGES
4 THAT THE PLAINTIFF HAS FAILED TO SHOW... ITS ENTITLING TO THAT
5 PROTECTION.

6 THE PLAINTIFF, IN RESPONSE TO THAT, HAS SHOWN THAT THE
7 TOPS AGREEMENT ITSELF, SECTION 2, PARAGRAPH 11, PROVIDES THAT
8 EMPLOYEES WHO ARE HIRED BEFORE A MARCH DATE IN 1963 THAT THE
9 DECLINE IN BUSINESS FORMULA IN THE TOPS AGREEMENT COULD NOT BE
10 APPLIED TO EMPLOYEES WHO WERE HIRED PRIOR TO THAT MARCH DATE IN
11 1963.

12 THE PLAINTIFF'S DECLARATION ESTABLISHES THAT SHE WAS
13 HIRED IN 1962, AND THAT SHE WAS TOLD THAT SHE WAS PROTECTED BY
14 THE TOPS AGREEMENT AGAINST JUST SUCH A PROVISION.

15 SO THAT THERE ARE SUBSTANTIAL MATERIAL FACTS WHICH ARE
16 IN ISSUE REGARDING THE PERFUNCTORY NATURE OF THE UNION'S
17 PROSECUTION OF THE CLAIMS OF THE PLAINTIFF AGAINST THE RAILROAD,
18 AND OF THE PLAINTIFFS' ENTITLEMENT TO RECOVERY.

19 THE COURT: SO THAT IS YOUR... YOU'RE RESTING UPON THAT
20 AS THE EVIDENTIARY SHOWING TO MEET YOUR BURDEN.

21 MR. KUBBY: FOR PURPOSES OF THE SUMMARY JUDGMENT ISSUE.

22 THE COURT: OKAY. ALL RIGHT.

23 MR. DARBY: JUST A COUPLE OF THINGS, YOUR HONOR.

24 FIRST OF ALL, REGARDING THE ARBITRATOR'S FINDING THAT
25 THE UNION PRODUCED NO EVIDENCE, AGAIN, THAT DOES NOT CONSTITUTE

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1 A BREACH OF THE DUTY OF FAIR REPRESENTATION UNDER THE APPLICABLE
2 LAW. IN ANY EVENT, THEY HAVE NOT REBUTTED THE UNION'S
3 CONTENTION IN ITS PAPERS THAT IT MADE A VIGOROUS ATTEMPT TO
4 OBTAIN SUCH INFORMATION, AND WASN'T ABLE TO FIND IT.

5 NOW THE PLAINTIFF HAS HAD OVER THREE YEARS OF DISCOVERY
6 AND HE STILL HASN'T PRESENTED THE EVIDENCE THAT WE SHOULD HAVE
7 PRESENTED. SO WITHOUT EVEN SEEING THAT EVIDENCE, EVEN IF IT DID
8 CONSTITUTE A BREACH, WE HAVE NO WAY OF KNOWING WHETHER IT WOULD
9 HAVE EVEN AFFECTED THE OUTCOME OF THE ARBITRATION DECISION.

10 REGARDING THESE ICC PROCEEDINGS, YOUR HONOR, THIS IS A
11 JUST A RED HERRING, WHICH I WOULD LIKE TO CLEAR UP. THE RAILWAY
12 LABOR EXECUTIVE'S ASSOCIATION, WHICH IS AN ORGANIZATION OF ALL
13 THE RAIL UNIONS, HAS PROCEEDED UNDER THE ICC PROVISIONS IN AN
14 ATTEMPT TO GET PROTECTION FOR EMPLOYEES THAT WERE AFFECTED BY
15 THE ATTEMPTED MERGER OF THE TWO RAILROADS.

16 THIS CASE INVOLVES A DECLINE IN BUSINESS, WHICH THIS
17 COURT HAS FOUND IN ITS PREVIOUS ORDERS. AND THE UNION NEVER
18 TOOK IT UPON ITSELF TO REPRESENT MRS. TU IN THE ICC PROCEEDINGS.
19 WE WERE NOT REPRESENTING ANY PARTICULAR INDIVIDUAL OR PLAINTIFFS
20 IN THE ICC PROCEEDING.

21 THE IRLA WAS MERELY TRYING TO GET A DETERMINATION FROM
22 THE ICC AS TO WHETHER OR NOT PEOPLE AFFECTED BY THE ATTEMPTED
23 MERGER MAY BE ENTITLED TO PROTECTION, BUT IT HAS NOTHING TO DO
24 WITH THIS CASE.

25 REGARDING OUR STANDING MOOT WHILE THIS COURT REJECTED

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1 THE PLAINTIFFS' CONTENTION OR ACCEPTED THE RAILROAD'S CONTENTION
2 THAT THERE SHOULD BE AN EXHAUSTION OF REMEDIES UNDER THE ICC,
3 IT'S MY UNDERSTANDING THAT THE POSITION THAT THIS COURT TOOK
4 ALMOST TWO YEARS AGO WHEN THIS ISSUE ORIGINALLY CAME UP, WAS
5 THAT THIS MATTER SHOULD BE SUBJECT TO THE ADMINISTRATIVE
6 PROCEDURES OF THE RAILWAY LABOR ACT, NOT THE ICC. AND THOSE
7 PROCEDURES WERE PURSUED, AND WE TOOK THE CASE TO ARBITRATION,
8 AND LOST.

9 FINALLY, WITH RESPECT TO THE PLAINTIFFS' INTERPRETATION
10 OF THE TOPS AGREEMENT, AGAIN, THAT MERELY GOES TO THE ISSUE OF
11 WHETHER OR NOT THE UNION SHOULD HAVE RAISED THIS AS AN OBJECTION
12 AT THE ARBITRATION HEARING. IT'S A MATTER FOR INTERPRETATION OF
13 THE COLLECTIVE BARGAINING AGREEMENT. THE ARBITRATOR RULED
14 AGAINST US. IN ANY EVENT, WE DID NOT RAISE THAT AS AN ISSUE IN
15 ARBITRATION BECAUSE THE LANGUAGE THAT MR. KUBBY RELIES ON REFERS
16 TO EMPLOYEES EMPLOYED AT THE SAN FRANCISCO GENERAL OFFICE FOR
17 THE SP HIRED BEFORE 1963. IT DID NOT APPLY TO PACIFIC FRUIT
18 EXPRESS EMPLOYEES.

19 SO EVEN IF IT WAS A MATERIAL FACT, IT'S INACCURATE.
20 BUT WE CONTEND THAT SINCE IT MERELY INVOLVES AN ALLEGED FAILURE
21 TO OBJECT TO EVIDENCE, OR TO RAISE A CERTAIN ISSUE, THAT IT
22 SHOULD NOT, IT'S NOT A MATERIAL ISSUE IN THIS CASE.

23 THE COURT: ALL RIGHT.

24 OKAY. OKAY, MATTER SUBMITTED THEN?

25 MR. KUBBY: YES.

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THE COURT: THANK YOU. WE WILL GIVE YOU A SCHEDULING
ORDER IN THE ORDER OF THE COURT.

MR. DARBY: THANK YOU, YOUR HONOR.

(PROCEEDINGS ADJOURNED)

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CERTIFICATE OF REPORTER

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I, DIANE E. SKILLMAN, THE UNDERSIGNED OFFICIAL COURT REPORTER FOR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE, SAN FRANCISCO, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, PAGES NUMBERED 1 THROUGH 11, INCLUSIVE, CONSTITUTES A FULL, TRUE AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL REPORTER TO THE PROCEEDINGS HEREINBEFORE ENTITLED, AND REDUCED TO TYPEWRITING TO THE BEST OF MY ABILITY.

Diane E. Skillman

DIANE E. SKILLMAN
OFFICIAL COURT REPORTER, C.S.R. 4909

FILED

AUG 14 1989

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1
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4 SIEU MEI TU and JOSEPH TU,)
5 Plaintiffs,)
6 v.)
7 SOUTHERN PACIFIC TRANSPORTATION)
8 COMPANY, et al.,)
9 Defendants.)


C-87-1198-DLJ

JUDGMENT

10 For the reasons set forth in this Court's order
11 granting defendants' motion for summary judgment, issued on
12 August 11, 1989, judgment is hereby entered in favor of
13 defendants.
14

15 IT IS SO ORDERED.

16 Dated: August 11, 1989

17 
18 _____
19 D. Lowell Jensen
20 United States District Judge
21
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FILED

AUG 14 1989

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

1	SIEU MEI TU and JOSEPH TU,)	
2)	
3	Plaintiffs,)	C-87-1198-DLJ
4)	
5	v.)	ORDER GRANTING
6)	DEFENDANTS' MOTION
7	SOUTHERN PACIFIC TRANSPORTATION)	FOR SUMMARY JUDGMENT
8	COMPANY, et al.,)	
9)	
10	Defendants.)	

11 On July 26, 1989, this Court heard the union
 12 defendants' motion for summary judgment and motion to
 13 strike. James M. Darby and Kathleen S. King appeared for
 14 defendants Brotherhood of Railway, Airline and Steamship
 15 Clerks, R. B. Brackbill, and J. M. Balovich. Lee J. Kubby
 16 appeared for plaintiffs.

17 For the following reasons, this Court GRANTS
 18 defendants' motion for summary judgment. Since only "Doe"
 19 defendants remain in the action, this Court DISMISSES
 20 plaintiffs' second amended complaint WITH PREJUDICE.
 21 Defendants' motion to strike is therefore MOOT.

I. BACKGROUND

22 Plaintiff Sieu Mei Tu, a sixty-two year old asian
 23 female, was laid off from employment by the Pacific Fruit
 24 Express Company (PFE), a subsidiary of the Southern Pacific
 25 Transportation Co. (SP). Plaintiffs Sieu Mei Tu and Joseph
 26 Tu claim that Sieu Mei Tu was terminated by PFE because of

1 her age, sex, and race, in violation of the California Fair
2 Employment and Housing Act. Plaintiffs further allege that
3 the union defendants breached their duty of fair
4 representation under the Railway Labor Act, 45 U.S.C. §§ 151
5 et seq, by failing to adequately presecute Sieu Mei Tu's
6 grievance against PFE.

7
8 **II. STANDARD FOR SUMMARY JUDGMENT**

9 Under Rule 56(c) of the Federal Rules of Civil
10 Procedure (FRCP), summary judgment may be granted when "the
11 pleadings, depositions, answers to interrogatories, and
12 admissions on file, together with the affidavits, if any,
13 show that there is no genuine issues as to any material fact
14 and that the party is entitled to a judgment as a matter of
15 law."

16 In a motion for summary judgment, "[i]f the party
17 moving for summary judgment meets its initial burden of
18 identifying for the court those portions of the materials on
19 file that it believes demonstrates the absence of any
20 genuine issues of material fact," the burden of production
21 then shifts so that "the nonmoving party must set forth, by
22 affidavit or as otherwise provided in Rule 56, 'specific
23 facts showing that there is a genuine issue for trial.'" T.W. Electrical Service, Inc. v. Pacific Electrical
24 Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987) (citing
25 Celotex Corp. v. Catrett, 106 S. Ct. 2548, 2553 (1986);
26

1 Kaiser Cement Corp. v. Fischbach & Moore, Inc., 793 F.2d
2 1100, 1103-4 (9th Cir.), cert denied, 107 S. Ct. 435 (1986))
3 (emphasis in original). Summary judgment may issue "after
4 adequate time for discovery and upon motion, against a party
5 who fails to make a showing sufficient to establish the
6 existence of an element essential to that party's case, and
7 on which that party will bear the burden of proof at trial."
8 Celotex Corp., 106 S. Ct at 2553-54. The standard for
9 judging either a defendant's or plaintiff's motion for
10 summary judgment is the same standard used to judge a motion
11 for a directed verdict: "whether the evidence presents a
12 sufficient disagreement to require submission to a jury or
13 whether it is so one-sided that one party must prevail as a
14 matter of law." Anderson v. Liberty Lobby, Inc., 106 S. Ct.
15 2505, 2512 (1986).

16 Under this standard, the Court finds that no genuine
17 issue of material fact remains with respect to plaintiffs'
18 claim for breach of duty of fair representation. Summary
19 judgment is therefore appropriate.

20 III. BREACH OF DUTY OF FAIR REPRESENTATION

21 Defendants move for summary judgment on plaintiffs'
22 claim for breach of duty of fair representation. A union
23 violates its duty of fair representation only if its conduct
24 toward a member of the collective bargaining unit is
25 "arbitrary, discriminatory or in bad faith." Vaca v. Sipes,

1 386 U.S. 171, 190 (1967); Salinas v. Milne Truck Lines,
2 Inc., 846 F.2d 568, 569 (9th Cir. 1988). A court must
3 initially determine whether the act in question involved the
4 union's judgment or whether it was "procedural or
5 ministerial." Moore v. Bechtel Power Corp., 840 F.2d 634,
6 636, (9th Cir. 1988). If a union's judgment is in question,
7 the plaintiff may prevail only if the union's conduct was
8 "discriminatory or in bad faith." Id.

9 Defendants argue that they are entitled to summary
10 judgment because they acted in good faith and without a
11 discriminatory motive in representing Sieu Mei Tu.
12 Defendants advance five arguments to support their claim
13 that their conduct was neither discriminatory or in bad
14 faith.

15 First, defendants point out that, in anticipation of
16 the closing of the Brisbane office, they filed a claim under
17 the collective bargaining agreement with PFE on behalf of
18 Sieu Mei and others similarly situated. In the claim,
19 defendants stated that PFE was wrongfully transferring work
20 to other companies and locations without providing employees
21 with "TOPS" protection.¹

22 Second, defendants note that after Sieu Mei Tu and
23 seven others were laid off, they filed another grievance,
24 insisting that the employees be permitted to follow their

25 ¹"TOPS" protection provides job guarantees and monetary
26 benefits for employees adversely affected by abolishments
27 and/or transfers.

1 work to San Francisco or be provided with "TOPS" protection.
2 The union eventually appealed both grievances.

3 Third, defendants note that in response to the
4 inquiries by plaintiffs' counsel, defendants informed him by
5 letter that the union was pursuing a claim under the
6 collective bargaining agreement on Sieu Mei Tu's behalf.

7 Fourth, defendants point out that they held meetings
8 with the Brisbane clerks during this period, which Sieu Mei
9 Tu attended, to inform the members of the actions the union
10 was taking against PFE.

11 Fifth, defendants contend that they took the grievance
12 to arbitration and were ultimately unsuccessful. However,
13 defendants maintain that they convinced the arbitrator that
14 the laid off employees, including Sieu Mei Tu, should be
15 given priority consideration for new jobs with SP.
16 Defendants note that they provided Sieu Mei Tu's name and
17 address to SP for reemployment consideration, and she was
18 interviewed for a new position as a result of their efforts.

19 This Court finds defendants' argument persuasive.
20 Defendants' adherence to established procedures for handling
21 grievances suggest that its conduct was neither
22 discriminatory or in bad faith, and therefore not a breach
23 of duty of fair representation. See Johnson v. United
24 States Postal Service, 756 F.2d 1461, 1466 (9th Cir. 1985).

25 Opposing defendants' motion, plaintiffs allege in their
26 papers and at oral argument that defendants breached their

1 duty of fair representation by acting in an arbitrary,
2 prejudicial, and perfunctory manner by failing: (1) to
3 present any evidence at the arbitration hearing; (2) to
4 confer with Sieu Mei Tu or her attorney concerning her
5 claims; (3) to make a discrimination claim on her behalf;
6 and (4) to protect her from retaliation. As support,
7 plaintiffs only refer to the transcripts of the arbitration
8 hearing, the Interstate Commerce Commission's hearing, and
9 this Court's hearing on the Railroad defendants' motion for
10 summary judgment.

11 This Court finds plaintiffs' argument unpersuasive. A
12 party responding to a motion for summary judgment may not
13 rest on mere allegations of pleadings but, rather, must set
14 forth specific facts showing there is a genuine issue for
15 trial. Celotex, 106 S. Ct. at 2552. It is the non-moving
16 party's burden to produce evidence that would support a jury
17 verdict in his favor. Anderson, 106 S. Ct. at 256.

18 In response to defendants' motion, plaintiffs refer
19 only to the transcripts noted above and the prior
20 declarations that plaintiffs filed in opposition to the
21 Railroad defendants' prior motion for summary judgment.
22 Even assuming that there is evidentiary material properly
23 before the Court in the transcripts, there is no showing by
24 this material or by the declarations that the defendants'
25 conduct was either discriminatory or in bad faith.
26 Plaintiffs have therefore failed to present any evidence

1 which raises a genuine issue of material fact. Since
2 plaintiffs offer only the conclusory allegations that
3 disputed material exists, without offering the necessary
4 supporting evidence, plaintiffs have failed to raise a
5 triable issue of material fact with respect to their claim
6 for breach of duty of fair representation.

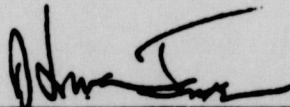
7 Accordingly, this Court GRANTS defendants' motion for
8 summary judgment as to plaintiffs' claim for breach the duty
9 of fair representation against the union defendants. Since
10 union officers are immune from personal liability for acts
11 undertaken as union representatives, Peterson v. Kennedy,
12 771 F.2d 1244, 1256-57 (9th Cir. 1985), summary judgment is
13 also appropriate in favor of R. B. Brackbill and J. M.
14 Balovich, named as individual defendants.

15
16 IV. CONCLUSION

17 Therefore, this Court GRANTS defendants' motion for
18 summary judgment as to plaintiffs' claim for breach of duty
19 of fair representation and DISMISSES WITH PREJUDICE
20 plaintiffs' second amended complaint. Defendants' motion to
21 strike is now MOOT.

22 IT IS SO ORDERED.

23 DATED: AUGUST 11, 1989.

24 
25 _____
26 D. Lowell Jensen
27 United States District Judge
28

1 LEE J. KUBBY, INC.
2 A PROFESSIONAL CORPORATION
3 BOX 60267
4 Palo Alto, CA 94306

5 Attorney for Plaintiffs

ORIGINAL
FILED

SEP 8 1989

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA

8
9 SIEU MEI TU AND JOSEPH Z. TU)

NO: C87-1198-DLJ

10 Plaintiffs)

11
12 VS)

NOTICE OF APPEAL
REQUEST TO PRE-
PARE REPORTERS
AND CLERKS
TRANSCRIPTS

13 SOUTHERN PACIFIC TRANSPORTATION)
14 COMPANY; ATCHISON, TOPEKA, SANTA FE)
15 RAILROAD COMPANY; PACIFIC FRUIT)
16 EXPRESS COMPANY; T. ELLEN; E.E.CLARK;)
17 d. W. FEND; T. R. ASHTON; DOE DEFEN-)
18 DANTS ONE TO TWO THOUSAND; WHITE)
19 COMPANY; BLACK CORPORATION; BROTHER-)
20 HOOD OF RAILWAY, AIRLINE AND STEAM-)
SHIP CLERKS; R. B. BRACKBILL; J. M.)
BALOVICH; SANTA FE SOUTHERN PACIFIC)
CORP.)

21 Defendants)

22 NOTICE IS HEREBY GIVEN THAT PLAINTIFFS SIEU MEI TU (SMT) AND
23 JOSEPH Z. TU (JZT) HEREBY APPEAL TO THE UNITED STATES COURT
24 OF APPEALS FOR THE NINTH CIRCUIT FROM THE FOLLOWING JUDGMENTS
25 AND ORDERS:

26 (a) Order denying Plaintiffs motion to remand entered 10/13/87
27 Docket 24.

28 (b) Order granting Defendants' Motion to Dismiss entered

4/8/88 Docket 36

1 (c) Order dismissing causes of action and parties, retaining
2 pendent jurisdiction, entered 7/1/88 Docket 51

3 (d) Order granting Defendants' motion for summary judgment as
4 to Plaintiff's claim for discrimination, loss of consortium
5 and breach of fair representation entered 2/8/89 Docket 98.

6 (e) Judgment entered 2/8//89 Docket 99.

7 (f) Order denying Plaintiff's motion for reconsideration as
8 to defendant Southern Pacific. Entered 5/11/89 Docket 114.

9 (g) Order granting defendants' motion for summary judgment and
10 dismissing with prejudice Plaintiffs' second amended com-
11 plaint. Docket 130.

12 (h) Judgment entered 8/21/89 Docket 131.

13 Appellant further requests the preparation of a
14 reporter's transcript which shall include all oral proceedings
15 whether in chambers or in open court including but not limited
16 to the following:

17 September 30, 1988

18 March 4, 1988

19 April 6, 1988

20 June 29, 1988

21 September 7, 1988

22 October 21, 1988

23 February 2, 1989

24 April 12, 1989

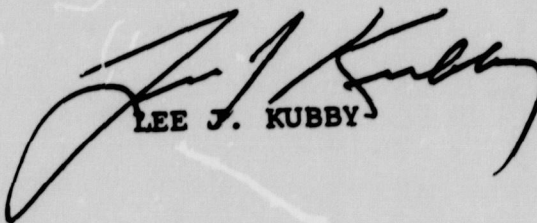
25 July 26, 1989

26 Appellant further requests the preparation of a
27 clerks transcript on appeal to include the documents and
28

1 records required to be included by the Federal Rules of
2 Appellate Procedure for the United States Courts of Appeal.

3 Dated September 5, 1989

LEE J. KUBBY, INC.
A Professional Corporation
By:

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LEE J. KUBBY

1 DECLARATION OF SERVICE BY MAIL

2 I, Lee J. Kubby, say and declare:

3 I am a citizen of the United States, over eighteen
4 years of age, and not a party to the within action. My
5 business address is BOX 60267, Palo Alto, California 94306. I am
6 an attorney at law licensed by the State of California.

7 That on

8 September 7, 1989

9 I served the attached:
10 NOTICE OF APPEAL REQUEST TO PREPARE REPORTERS AND CLERKS TRANS-
11 CRIPTS

12 via United States First Class Mail on the following party of
13 record:

14 ROBERT S. BOGASON
15 SOUTHERN PACIFIC TRANSPORTATION COMPANY
16 One Market Plaza, Room 837
17 San Francisco, CA 94105
18 Telephone: 415-541-1786

19 PATRICK W. JORDAN Kathleen S. King, Esq.
20 WAYNE M. BOLIO Henning, Walsh & King
21 McLAUGHLIN AND IRVIN 100 Bush Street, Suite 440
22 111 Pine Street, Suite 1200 San Francisco, CA 94104
23 San Francisco, CA 94111-5109 TELEPHONE (415) 981-4400
24 TELEPHONE: 415-433-6330

25 JOHN H. ERNSTER James M. Darby
26 One Santa Fe Plaza TCIU
27 5200 E. Sheila Street 3 Research Place
28 Los Angeles, CA 90040 Rockville, MD 20850
TELEPHONE: 213 267-5605

and by then sealing said envelope and depositing same into
the United States Mail, postage fully prepaid.

I declare under penalty of perjury that the foregoing is
true and correct.

Executed on September 7, 1989. at Palo Alto, California.

LEE J. KUBBY

District	Off.	Yr.	Docket No. Number	OR	Filing Date Mo.	Day	Yr.	J.	Nature Suit	R 23	Judge	Mag.	Jury Dem	ARB	MDL Docket	Yr.	Docket No.
971	3	87	1198	2	03	20	87	3	740		7124		D			87	1198

CAUSE: 08 LABOR: Railway Labor Act: 45 USC 151, et seq

PLAINTIFFS

TU, SIEU MEI AND TU, JOSEPH Z.

DEFENDANTS

SOUTHERN PACIFIC TRANSPORTATION COMPANY, ATCHISON, TOPEKA, SANTA FE RAILROAD COMPANY, PACIFIC EXPRESS COMPANY, ALLEN, T.; CHASE, E.E.; FEND, R. W.; ASHTON, T. DOE DEFENDANTS ONE TO TWO THOUSAND WHITE COMPANY, BLACK CORPORATIONS

CLOSING CARD PREPARED

FIRST AMENDED COMPLAINT

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS; R. B. BRACKBILL; BALOVICH; SANTA FE SOUTHERN PACIFIC

ATTORNEYS

LEE J. KUBBY, INC.
~~One Palo Alto Square~~
~~Suite 260~~
~~Palo Alto, CA 94306~~
 Box 60267
~~755 Page Mill Road, Ste. A100~~
 Palo Alto, CA 94306 (415) 856-3505

ROBERT S. BOGASON
 SOUTHERN PACIFIC TRANSPORTATION COMPANY
 One Market Plaza, Room 837
 San Francisco, CA 94105
 (415) 541-1786

AND

Patrick W. Jordan
 Wayne M. Bolio
 McLaughlin and Irvin
~~100 Pine St., Suite 770~~ 111 Pine St.
 San Francisco, CA 94111-5109
 (415) 433-6330
 For: Pacific Fruit Express Co.
 and Southern Pacific
 Transportation Co.

Defendant's Attorneys Cont.

Kathleen S. King
 HENNING, WALSH & KING
 100 Bush St., Suite 440
 San Francisco, CA 94104
 (415) 981-4400
 &
 James M. Darby
 Assistant General Counsel
 Transportation Communication Int'l Union
 3 Research Place
 Rockville, MD 20850
 For: Brotherhood of Railway, Airline & Steamship
 Clerks, R.B. Brackbill, J.M. Balovich

John H. Ernster
 Joseph O. Costello
 One Santa Fe Plaza
 5200 E. Sheila Street
 Los Angeles, CA 90040
 (213) 267-5605
 For: The Atchison, Topeka and Santa
 Railway Co. & Santa Fe Southern Pacific
 Corporation

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL REP PROCESSED
	DATE	RECEIPT NUMBER	C.D. NUMBER	Filing
				Termination 2/1
				Change

DATE	NR.	PROCEEDINGS	C-87-1198 DLJ
1987			
Mar 20	1	PETITION FOR REMOVAL from the Superior Court State of California, City and County of San Francisco, Case #864666; documents removed: summons, and complaint. No process -Bond for removal: Surety-American Casualty Company of Reading, PA; Bond-\$250.00	
	2	ORDER: First status conference set for 6-17-87/9 a.m.	DLJ
23	3	Defendant Pacific Fruit Express Company's ANSWER TO COMPLAINT	
	4	Defendants' first request for production of documents	
	5	-notice of taking deposition: Edna Clark, 5-13-87/9:30 a.m.	
	6	-notice of taking deposition: Joseph Z. Tu, 5-12-87/9:30 a.m.	
	7	-notice of taking deposition: Sieu Mei Tu, 5-11-87/9:30 a.m.	
	8	Defendant Southern Pacific Transportation's ANSWER TO COMPLAINT	
24	9	Plaintiffs' Objection to Jurisdiction; demand for jury; objection to sufficiency of bond	
27	10	Defendants' notice of taking deposition: Dr. Robert F. Tomfonrde, 9:30 a.m.; Dr. Ronald C. Lee, 9:45 a.m.; Dr. Ronald Elson, 10 a.m.; All said depositions will be taken on 6-13-87	
June 5	11	Defendant's Pacific Fruit Express Company Status Conference Statement, June 17, 1987 at 9:00 a.m.	
	12	- Declaration of Wayne M. Bolio in support of Document #11	
11	13	Plaintiff's Status conference statement on June 17, 1987 at 9:00 a.m.	
18	14	MINUTES: (c/r:none), status conference held on 6-17-87; further status 8-5-87/9 a.m.	DLJ
Jul 16	15	Defendants' first set of interrogatories to plaintiff	
20	16	Plaintiffs' motion to remand to superior court, 8/19/87 at 9:30 am - memorandum of points and authorities in support thereof	
28	17	Defendants' memorandum in opposition to plaintiffs' motion to remand, 8/19/87 at 9:30 am	
3	18	Plaintiffs' motion to remand to superior court (renotice), 9/10/87 at 10 am	
	19	Clerk's notice re: plaintiff has filed a motion to remand, noticed for hearing on 9/30/87 at 10 am; opposition due 9/16/87; reply to opposition due 9/23/87	
21	20	Plaintiffs' motion to remand to Superior Court; declaration in support thereof, 9/30/87 at 10 am	

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. _____
TU		SOUTHERN PACIFIC TRANSPORTATION CO., et al	PAGE ____ OF ____ PAGE

DATE	NR	PROCEEDINGS
<u>1987</u> Sep 3	21	Defendants' supplementary brief in opposition to motion for remand 9/30/87 at 10 am
	23	Plaintiffs' response to opposition motion to remand, 9/30/87 @10 a
	30	MINUTES: (c/r: Jim Yeomans), plaintiff's motion to remand DENIED; status conference not held; order to be prepared by defendant; case continued to 12/16/87 at 9 am for further status. DL
Oct 6		RECEIVED: Proposed order denying motion to remand
	9	ORDER: Plaintiffs' motion to remand is DENIED. Entered 10/13/87, copies to parties. Clerk. DL
	13	Defendants' proof of service by mail re: #24
	15	Summons issued. Clerk. (2 originals issued)
	30	Defendants' notice of change of address of counsel
Dec 24	25	Defendants The Atchison, Topeka and Santa Fe Railway Company and Santa Fe Southern Pacific Corporation's <u>ANSWER TO COMPLAINT</u> , demand for jury trial
	26	- demand for prior pleadings and discovery
<u>1988</u> Jan 20	27	Clerk's notice re: status conference has been scheduled for 3/4/88 at 9 am
Feb 29	28	Defendants' notice of motion and motion to dismiss and/or for summary judgment, 4/6/88 at 10 am
	29	- memorandum of points and authorities in support of #28
	30	- declaration of Kevin Block in support of #28
	31	Clerk's notice re: defendants have filed a motion to dismiss, noticed for hearing on 4/6/88 at 10 am; opposition due 3/23/88; reply due 3/30/88
Mar 4	32	MINUTES: (c/r none), status conference held; case continued to 4/6/88 at 10 am for defendant's motion to dismiss. DL
	23	Plaintiffs' response in opposition to motion to dismiss, 4/6/88 at 10 am
	29	Defendants' reply brief in support of motion to dismiss and/or for summary judgment, 4/6/88 at 10 am

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF TU	DEFENDANT SOUTHERN PACIFIC TRANSPORTATION CO., et al	DOCKET NO. _____ PAGE ____ OF ____ PAGES
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DATE	NR.	PROCEEDINGS
1988 Apr 6	35	MINUTES: (c/r William Johnston), defendant's motion to dismiss GRANTED; order to be prepared by court; 30 days leave to amend. DLJ
	36	ORDER: Defendants' motion to dismiss is GRANTED; plaintiffs are GRANTED leave to amend the complaint to state a federal cause of action; amendment must be filed with 30 days. DLJ Entered 4/8/88, copies to parties. Clerk.
14	37	Defendants proof of service by mail of order on defendant's motion to dismiss
29	38	Plaintiffs' FIRST AMENDED COMPLAINT
May 10		Summons on first amended complaint issued. Clerk.
19	39	Defendants Santa Fe Southern Pacific Corp & The Atchison, Topeka and Santa Fe Railway Co.'s notice of motion and motion for dismissal, 6/29/88 at 10 am
	40	- memorandum of points and authorities in support of #39
	41	- joinder in Southern Pacific Transportation Co.'s motion to dismiss
	42	Defendants Southern Pacific Transportation Co. & Pacific Fruit Express' notice of motion and motion to dismiss and/or for summary judgment, 6/29/88 at 10 am
	43	- memorandum of points and authorities in support of #42
24	44	Clerk's notice re: defendant Southern Pacific has filed a motion to dismiss or for summary judgment, noticed for hearing on 6/29/88 at 10 am; opposition due 6/15/88; reply due 6/22/88
Jun 15	45	Plaintiffs' response in opposition to motion to dismiss - declaration of Lee J. Kubby in support thereof
21	46	Plaintiffs' corrections to response in opposition to motion to dismiss
22	47	Defendants The Atchison, Topeka and Santa Fe Railway Company and Santa Fe Southern Pacific Corporation's reply memorandum in support of motion to dismiss
	48	Defendants Southern Pacific Transportation Co. and Pacific Fruit Express Co.'s reply brief in support of motion to dismiss and/or for summary judgment
29	49	MINUTES: (c/r Vivian Balboni), defendant S.P.'s motion to dismiss or for summary judgment; defendant Atchison, Topeka & Santa Fe's motion to dismiss and for summary judgment; order to be prepared by court; 1st three claims are dismissed; 8th claim dismissed; remaining claims under submission. DLJ
	50	Plaintiffs' supplemental declaration of Lee J. Kubby re motion to dismiss opposition

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF TU	DEFENDANT SOUTHERN PACIFIC TRANSPORTATION CO.	DOCKET NO. _____ PAGE ____ OF ____ PAGES
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CLOSING CARD PREPARED

PROCEEDINGS

DATE	NR.	PROCEEDINGS
1988 Jun 30	51	ORDER: The first, second, third, fifth and seventh causes of action are DISMISSED with prejudice; court will exercise its pendent jurisdiction over fourth and : claims; defendant railroads are DISMISSED from eighth cause of action; defend Santa Fe and Railway are DISMISSED from all causes of action; status conference will be held on 9/7/88 at 9 am. Entered 7/1/88, copies to parties. Clerk
Aug 2	52	Defendants Brotherhood of Railway, Airline and Steamship Clerks, R.B. Brackbill and J.M. Balovich's ANSWER TO FIRST AMENDED COMPLAINT
Sept 7	53	MINUTES: (c/r none) status conference held; case continued to 12/14/88 at 10:00 a.m.; James Darby admitted pro hac vice; Plaintiff will not serve individual defendants based on court's previous order, and court agrees; Defendant to file summary judgment motion by 11/16/88; issue order.
12	54	ORDER: Defendant's are to file and serve their motion for summary judgment b 11/16/88. Hearing and further status conference to be held on 12/14/88 at 10 a.m. DL
27	55	Plaintiffs' notice to take deposition of J. M. Balovich and R. B. Brackbill c 10/26/88 at 10:00 a.m.
Oct 17	56	ORDER: case referred to Chief Magistrate for purposes of discovery only.
24	57	ORDER: deposition of J.M. Balovich to be continued to 11/21/88 and depositio R.B. Brackbill to 11/22/88; Magistrate will request from Judge Jensen additi time for plaintiff's response
21*	58	MAGISTRATE MINUTES: (c/r none) discovery hearing in person and via phone; minute order to be entered - see #57 .
27	59	STIPULATION AND ORDER: last day for defendants to file their motion for sum judgment continued from 11/16/88 to 1/4/89; hearing continued from 12/14/88 2/1/89 at 10:00 a.m., and further status conference to be held at same time.
Nov 7	60	Clerk's notice to counsel that status conference and motions date reschedule from 2/1/89 to 2/2/89.
23	61	Notice of motion and motion for disqualification or other appropriate sancti (Southern Pacific Transportation Co. and Pacific Fruit Express Co.); hearing 12/28/88 at 10:00 a.m.
	62	- memorandum of points and authorities in support of #61
	63	- declaration of Kevin Block
	64	- declaration of Posey Hudnall
		RECEIVED: proposed order granting defendants' motion for disqualification

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF TU, et al	DEFENDANT SOUTHERN PACIFIC TRANSPORTATION CO. et al	DOCKET NO. _____ PAGE ____ OF ____ PAGE
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DATE	NR.	PROCEEDINGS
<u>1989</u> Jan 3	65	Defendants Southern Pacific Transportation Co. and Pacific Fruit Express Co.'s declaration of Kevin Block.
	66	- Declaration of Chere Bondie.
	67	- proof of service of Stipulation and Order continuing hearing on motion for disqualification, documents #65 and 66.
4	68	Union Defendants' motion for summary judgment or, in the alternative, motion to dismiss, Feb. 2, 1989 at 10:00 am.
	69	- statement of material facts as to which there is no dispute.
	70	- Memorandum of points and authorities in support of #68.
	71	- Declaration of R.B. Brackbill.
	72	- Declaration of James M. Darby.
		RECEIVED: Proposed Order granting motion for summary judgment.
	73	STIPULATION AND ORDER: Hearing on defendants' motion for disqualification or other appropriate sanctions, previously set for Dec. 28, 1988 be continued to Jan. 25, 1989 at 10:00 a.m. D
	74	Clerk's notice to Counsel Re: there is already a hearing date and status confer set for Feb. 2, 1989, the defendants' motion to disqualify counsel will also be heard on Feb. 2, 1989 at 10:00 a.m. There will be no any hearing on Jan. 25, 19
5	75	Defendants Southern Pacific Transportation Co. and Pacific Fruit Express Co.'s notice of motion and motion for summary judgment, Feb. 2, 1989 at 10:00 a.m.
	76	- Memorandum of points and authorities in support of motion for summary judgment
	77	- Declaration of Ricahrd Fend in support of #75.
	78	- Declaration of Tom Ellen in support of #75.
	79	- Proof of service of documents #75 thru 78.
		RECEIVED: Proposed Order granting defendants' motion for summary judgment.
7	80	Clerk's notice to Counsel Re: Union defendant's motion for summary judgment or dismissal is set for Feb. 2, 1989 at 10:00 a.m.; opposition papers by Jan. 19, 1989; reply papers by Jan. 26, 1989.

SEE SHEET C

115.

PLAINTIFF SIEU MEI TU AND JOSEPH TU		DEFENDANT SOUTHERN PACIFIC TRANSPORTATION, et al	DOCKET NO. ... PAGE ___ OF ___
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DATE	NR.	PROCEEDINGS
1989 Jan 9	81	Defendants Southern Pacific Transportation Co. and Pacific Fruit Express amended notice of motion for disqualification or other appropriate sanction Feb. 2, 1989 at 10:00 a.m.
	82	- Proof of service of stipulation and Order continuing hearing on motion for disqualification; notice from Court Re: motion; Amended notice of motion
12	83	Clerk's notice that debt motion for summary judgment will be heard on 2/2/89 at 10am.
19	84	Plaintiffs' notice of change of address.
	85	- Objection to and motion to strike portions of declarations in support of motion for summary judgment, 2/2/89 at 10:00 a.m.
	86	- Statement of disputed material facts in opposition to motion for summary judgment.
	87	- Memorandum of points and authorities in opposition to motion for summary judgment.
	88	- Declaration in opposition to motion for disqualification.
	89	- Declaration of Lee J. Kubby in opposition to motions for summary judgment.
	90	- Declaration in opposition to motion for summary judgment.
		RECEIVED: Proposed Order Re: motion for summary judgment and motion to
26	91	Union Defendants' reply to plaintiffs' memorandum of opposition to motion for summary judgment, Feb. 2, 1989 at 10:00 a.m.
	92	- Declaration of Kathleen S. King in support of #91.
	93	Defendants Southern Pacific Transportation Co. and Pacific Fruit Express reply brief in support of motion for disqualification or other appropriate sanction Feb. 2, 1989 at 10:00 a.m.
	94	- reply brief in support of motion for summary judgment.
	95	- Declaration of Kevin Block in support of #94.
	96	- Supplemental declaration of Kevin Block.
Feb 2	97	MINUTES: (c/r None) Held status conference 2/2/89; Defendant's motion for disqualification Denied; Defendant's motion for summary judgment under submission; Defendant Southern Pacific's motion for summary judgment under submission

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF SIEU MEI TU	DEFENDANT SOUTHERN PACIFIC TRANSPORTATION	DOCKET NO. _____ PAGE ____ OF ____ PAGES
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DATE	NR.	PROCEEDINGS
1989 Feb 6	98	ORDER: Defendants' motion for summary judgment are GRANTED, as to plaintiff's claim for discrimination, loss of consortium and breach of fair representation; Defendants' motion for Disqualifacation DENIED. DLJ ENTERED: 2/8/89 clerk
	99	JUDGMENT: Re: order #98 in favor of defendants. DLJ ENTERED: 2/8/89 mailed copites to counsel clerk
16	100	Defendant Union Brotherhood of Railway's brief in support of taxation costs.
	101	-Proof of service
	102	Defendant's bill of costs for Brotherhood of Railway.
	103	Defendant Southern Pacific's bill of costs.
17	104	Plaintiffs notice of motion and motion new trial , vacate, reconsider, amend , or alter judgment, relief from judgment. set 3/22/89 at 10:00 a.m.
	105	- Memo of points and authorities re: #104 RECEIVED: Proposed order # 104
20	106	Clerk's notice of plaintiff's motion for reconsideration set 3/22/89 at 10:00
Mar 7	107	Letter to clerk from Kathleen King re stipulation continuing hearing date.
	108	Defendants Union' declaration of Kathleen S. King.
	109	STIPULATION AND ORDER: Modification of briefing schedule, see order for more info DLJ
22	110	Defendant's Union' opposition to plaintiff's motions for new trial for vacate and reconsideration. set 4/12/89 at 10:00 a.m.
	111	- Memo in opposition re # 110
29	112	Plaintiff's response opposition motion new trial , vacate, reconsider, amend or alter judgment, relief from judgment , amend findings. 4/12/89 10:00a.m.
Apr 12	113	MINUTES: (c/r Carl Pline) plaintiff's motion for reconsideration under submissi DL
May 3	114	ORDER: Court denies plaintiffs' motion for reconsideration as to defendnt Southern Pacific and GRANTS plaintiffs' motion for reconsideration as to Union. DL ENTERED: 5/11/89 clerk
Jun 2	115	Plaintiffs' SECOND AMENDED COMPLAINT.
12	116	Plaintiff's notice of change of address, vacation schedule cessation of fax.
15	117	Defendant's Motion for summary judgment set 7/26/89 at 10:00a m.
	118	-Motion to strike various causes of action from plaintiff's second amended comp SEE SHEET "D"

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF SIEU MEI TU	DEFENDANT SOUTHERN PACIFIC TRANS.	DOCKET NO. _____ PAGE ____ OF ____
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PROCEEDINGS

DATE	NR.	PROCEEDINGS
<u>1989</u>		
Jun 15	119	Defendant's statement of material facts as to which there is no dispute.
	120	-Declaration of R.B. Brackbill.
		RECEIVED: proposed order granting motion for summary judgment 7/26/89 at 10:
17	121	Clerk's notice of motion to strike and a motion for summary judgment 7/26/89 at 10:00 a.m.
15*	122	Defendant's memo of points and authorities in support of motion for summary judgment.
	123	-Declaration of James Darby.
Jul 12	124	Plaintiff's objective to and motion to strike portions of declaration in support of motions for summary judgment set 7/26/89 at 10:00a.m.
	125	-Memo of points and authorities in opposition of motion for summary judgment
	126	-Incorporation by reference declaration in opposition to summary judgment.
	127	-Statement of disputed material facts.
19	128	Defendant's Union reply to plaintiff's memo in opposition to motion for summary judgment. set 7/26/89 at 10:00 a.m.
27	129	MINUTES: (c/r Diane Skillman) Hearing of 7/26/89 Union Defendant's motion to strike and for summary judgment under submission. Order to be prepared by clerk
Aug 14	130	ORDER: Court Grants defendants' motion for summary judgment as to plaintiff's claim for breach of duty of fair representation and dismisses with prejudice plaintiffs' second amended complaint. Defendants' motion to strike is moot ENTERED: 8/21/89 clerk
	131	JUDGMENT: For the reasons set forth in this court's order granting defendant's motion for summary judgment, issued on 8/11/89 judgment is hereby entered in favor of defendants. ENTERED: 8/21/89 clerk