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DEC 27 2002

U. S. DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
ST. LOUIS
KAREN YAPP, et al.,

THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

CA

DEC 27 2002

U. S. DISTRICT COURT
E. DIST. OF MO.
ST. LOUIS

Plaintiffs,

v.

UNION PACIFIC RAILROAD
COMPANY,

Defendant.

Action No. 4:02CV00615SNL

PROTECTIVE ORDER

Upon consideration of the parties' joint motion pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and stipulation for a Protective Order concerning certain information and documents which have been or may be provided by defendant to plaintiffs, and by plaintiffs to defendant, and it appearing to the Court that sufficient cause exists for the issuance of a Protective Order.

IT IS HEREBY AGREED AND ORDERED as follows:

A. DEFINITIONS

1. "Discovery Material" shall mean all documents (as defined with the broadest meaning under Fed. R. Civ. P. 26 and 34), computer tapes or disks, electronic database information, matters, tangible items, things, objects, materials and/or substances produced or exchanged between plaintiffs and defendant, whether original or copies, and any information contained in responses to Requests to Produce Documents, Interrogatories and/or Requests for Admissions or in any other discovery, including but not limited to deposition testimony, transcripts and exhibits.

2. “Restricted Information” shall mean any Discovery Material and its contents designated “Restricted Information,” “For Counsel Only” or “For Attorneys’ Eyes Only” as set forth in paragraph C.1 below, and any documents filed with the court including but not limited to pleadings, to the extent such documents quote, summarize or contain Restricted Information.

3. Solely for purposes of this Order, “party” or “parties” shall mean any entity or person, including any putative class member, that is a party to this litigation. This Order does not affect the position of any party with respect to whether putative class members shall be considered “parties” for any purpose other than this Order.

4. “Producing person” or “producing party” shall mean the person or entity disclosing particular Discovery Material through discovery.

B. LIMITATION OF USE OF DISCOVERY MATERIALS TO CURRENT LITIGATION

1. In accordance with the provisions set forth below, the Court hereby orders that Discovery Material shall be used by the party to whom such Discovery Material is produced, obtained or exchanged solely for the purpose of this lawsuit and for no other purpose, unless such information is readily available to the general public.

2. In order to provide additional notice of the limitations imposed by this Protective Order on the use of Discovery Materials a party may include the designation “Confidential Pursuant to Protective Order” on any Discovery Material produced in this action. However, recognizing that it may not be feasible to place such designations on information or data produced in an electronic format, such a designation is not required and Discovery Material that does not contain any such designation remains subject to the requirement that the party to whom it is produced shall use it solely for the purpose of this lawsuit, unless such information is readily available to the general public.

3. Conversely, placing the designation “Confidential Pursuant to Protective Order” on Discovery Material that is readily available to the general public does not impose any limitation upon the use of such materials.

C. DESIGNATION OF RESTRICTED INFORMATION

1. Any party may designate a document as “Restricted Information” pursuant to the terms of this Order by affixing to the first page thereof a stamp or label with the legend “Restricted Information,” “For Counsel Only” or “Attorneys’ Eyes Only,” or may, in the alternative, by written notice inform opposing counsel that the document (including, but not limited to, categories of electronic data) is to be treated as Restricted Information. Nothing should be designated as Restricted Information unless the information is of a sensitive nature whose disclosure would damage the business interests of the party or unreasonably invade the personal privacy of any individual.

2. If a party inadvertently fails to designate Discovery Material it has produced as Restricted Information, it may make the designation belatedly so long as the party does so promptly after learning of the oversight, or promptly after the party should have reasonably been aware of the oversight.

3. Restricted Information shall be produced only to counsel of record in this action, all of whom are bound by the terms of this Order.

4. Neither the Restricted Information nor its contents shall be disclosed to any other person without the agreement of the party designating the information as such except that counsel may, without further agreement, disclose the Restricted Information or its contents to the following persons for use solely in connection with this action under the following conditions:

a. Attorneys for the parties who are actively engaged in the conduct of this litigation (both outside and in-house counsel employed by any party), and secretarial,

paralegal, technical and/or clerical employees assisting them in the conduct of this litigation who have a need to handle the Restricted Information under normal office procedure;

b. Experts or consultants (and their staffs) retained by the parties with respect to this action;

c. Any person from whom testimony has been taken or is reasonably expected to be taken in this action (whether by deposition or at trial) to the extent reasonably necessary in preparing to testify in this litigation, provided, however, that (i) no such deponent or witness may retain an original or copy of any material designated as Restricted Information, except as otherwise provided by this Order and (ii) except for expert witnesses no such deponent or witness may be made aware of any information relating to a specific employee's (or a specific ex-employee's) performance evaluation, performance ranking, performance rating, compensation, assessment of potential, or designation for purposes of succession planning, unless the deponent or witness had previously had knowledge of such information about the specific employee for legitimate purposes other than this litigation, **provided, however,** that nothing in this paragraph is intended to preclude disclosure to a named plaintiff of the performance evaluations of other employees who were in direct competition with a named plaintiff or putative class member for a specific promotion or transfer vacancy or the performance evaluations of any person who was a decisionmaker with respect to such a vacancy and **further provided** that nothing in this paragraph is intended to preclude disclosure to a putative class member of the performance evaluations of other employees who were in direct competition with that putative class member for a specific promotion or transfer vacancy (but this paragraph does preclude disclosure to any named plaintiff or class member of performance and potential information from UPRR's Annual Organizational Reviews);

d. Any person who is a named party plaintiff and/or any officer, director, or employee of any party defendant who has reasonable need for the information for the

prosecution or defense of this litigation, provided, however, that (i) no individual named party plaintiff may be given or retain a copy of any material designated as Restricted Information, but, subject to (ii), (iii), and (iv) below, may review said material in the presence of his or her counsel, i.e., either an attorney or employee representative of Sedey & Ray, P.C. and/or Gordon, Silberman, Wiggins & Childs, P.C.; (ii) no individual named party plaintiff may be made aware of any information relating to a specific employee's (or a specific ex-employee's) performance evaluation, performance ranking, or performance rating, unless the named plaintiff had previously had knowledge of such information about the specific employee for legitimate purposes other than this litigation or unless the specific employee was in direct competition with an individual party plaintiff or putative class member for a promotion or job assignment or unless the person was a decisionmaker with respect to such a promotion or job assignment; (iii) no putative class member may be made aware of any information relating to a specific employee's (or a specific ex-employee's) performance evaluation, performance ranking, or performance rating, unless the putative class member had previously had knowledge of such information about the specific employee for legitimate purposes other than this litigation or unless the specific employee was in direct competition with the putative class member for a promotion or job assignment and (iv) no individual named party plaintiff or class member may be made aware of any information relating to a specific employee's (or a specific ex-employee's) compensation, assessment of potential, or designation for purposes of succession planning (specifically including information in UPRR's Annual Organizational Reviews), unless the individual named party plaintiff or class member had previously had knowledge of such information about the specific employee for legitimate purposes other than this litigation;

e. This Court and its staff; and

f. Any court reporters present in their official capacity at any hearing, deposition, or other proceeding in this action.

5. Each person referred to in subparagraphs 4(b), 4(c) and paragraph 6 of this section C, any named party plaintiff, and any member of the putative class who has been shown or given access to Discovery Material (including Restricted Information), or information derived therefrom, shall sign an undertaking in the form attached as Exhibit A to this Order, stating that he or she has read a copy of this Order and agrees to be bound by its provisions. The signed undertakings shall be retained by counsel for the party and/or parties providing such material or information to such person, and any party may file a motion with the Court seeking disclosure of such signed undertakings. Counsel are responsible for taking reasonable steps to ensure that any persons other than counsel of record to whom Discovery Material is disclosed will observe the terms of this Protective Order.

6. The provisions of this Order apply to any person(s) attending a deposition to the same extent as if such person were being shown written Discovery Material but will not constitute a basis for excluding a party from attending any deposition.

7. Any party may also designate all or a portion of a deposition as Restricted Information by notifying the other parties in writing within twenty (20) days of receipt of the transcript of the portions that are designated Restricted. All depositions shall be treated as Restricted Information during this twenty (20) day period.

8. The parties agree that any and all electronic data and data bases produced by Union Pacific Railroad to Plaintiffs, and all information contained therein, shall be designated and treated as Restricted Information under this Order.

9. A party should not designate any information as Restricted Information or should withdraw a designation of information as Restricted Information if it is

information that (a) is in the public domain, at the time of disclosure or previously to the time of disclosure, as evidenced by a written document; (b) subsequently becomes part of the public domain through no fault of the other party, as evidenced by a written document; (c) the receiving party can show by written documentation that the information was in its rightful and lawful possession at the time of disclosure; or (d) the receiving party lawfully receives such information at a later date from a third party without restriction as to disclosure, as evidenced by a written document, provided that such third party has the right to make the disclosure to the receiving party.

D. USE OF RESTRICTED INFORMATION

1. Restricted Information shall be used solely for the purpose of prosecution or defense of this action, and such documents or information may be used, consistent with the terms of this Order, in pretrial discovery and at the trial or preparation for trial and any appeals of this action subject to paragraph D.4. The use of Restricted Information at trial or at depositions shall not be deemed a waiver of this Order, and the parties and their attorneys shall be required to comply with the terms of this Order other than in the presentation of evidence at trial.

2. This Order has no effect upon, and its scope shall not extend to, any party's use of its own Restricted Information.

3. Producing or receiving Discovery Materials or otherwise complying with the terms of this Order shall not:

a. prejudice in any way the rights of any party to object to the production of documents it considers not subject to discovery or otherwise protected from or limited in discovery on the basis of privilege or otherwise; or

b. prejudice in any way the rights of a party to seek a court determination whether particular Discovery Material should be produced; or

c. prejudice in any way the rights of a party to apply to the Court for any additional protection with respect to the confidentiality of documents or information as that party may consider appropriate.

4. Any party wishing to use Restricted Information produced or generated by any other party in any brief, memorandum, affidavit or other paper filed with the Court shall file all such affidavit(s), exhibit(s), or other paper(s), and any portion of any brief or memorandum referring or alluding to said Restricted Information, under seal, enclosing the document(s), excerpt(s) or exhibit(s) in a sealed envelope, labeled with the caption of the case, a brief description of the contents, and a statement that the envelope is sealed pursuant to this Order. A party's inadvertent filing of Restricted Information with the Court without complying with the restrictions of this Order will not constitute a violation of this Order if (a) the party undertakes prompt good faith efforts to correct the improper filing and the materials in fact are not disclosed to any third party or (b) the party can prove that the improper filing was made in good faith and not for any improper purpose and that immediate corrective efforts were undertaken as soon as the error was discovered.

5. The Clerk of this Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions, and other pleadings filed under seal with the Court in this litigation that have been designated, in whole or in part, as Restricted Information, by any party to this action.

6. This order shall not bar any attorney in the course of rendering advice to his client with respect to this litigation from conveying to any party client his or her evaluation in a general way of Restricted Information produced or exchanged herein; provided, however, that in rendering such advice and otherwise communicating with his client, the attorney

shall not disclose the specific contents of any Restricted Information to the extent that such disclosure would otherwise be in violation of the terms of this Protective Order.

E. EXPERTS

Each party shall undertake to determine, prior to the disclosure of Restricted Information to any independent outside experts or consultants, whether the expert or consultant is or has been within the prior five years an employee of a competitor of the opposing party in this litigation, or during the one year period before retention as an expert in this case has provided services to a competitor of the opposing party in this litigation. If so, the opposing party will be given ten (10) business days notice of intent to disclose Restricted Information produced by that party. The notice shall consist of the name of the competitor of the opposing party, but need not include the name of the individual expert or consultant. The opposing party may consent to the disclosure, or move for an Order preserving confidentiality pursuant to the provisions of paragraph I below within ten (10) business days of notice. In the event of such a motion, the party seeking disclosure may be required to disclose to the Court *in camera* the name of the expert and the Restricted Information to be disclosed, to the extent necessary to decide the motion.

F. SUBPOENA BY OTHER COURTS OR AGENCIES

If another court or an administrative agency subpoenas or orders production of Discovery Material, including Restricted Information, that a party has obtained in discovery in this litigation, the party that has received the subpoena or order (the "subpoenaed party") shall notify the person that produced the Discovery Material (the "producing party") of the pendency of such subpoena or order as soon as reasonably possible, but in no event later than ten (10) business days after receiving the subpoena or order, and in any event before the date of production set forth in the subpoena or order. The producing party may then notify the subpoenaed party of the producing party's intent to intervene to resist the subpoena or order. The producing party must provide such notification to the subpoenaed party no later than three business days before the response to the subpoena or order is due (unless the subpoenaed party provides notice of the subpoena or order to the producing party less than five business days before the response to the subpoena or order is due, in which case the producing party must provide such notification to the subpoenaed party as soon as reasonably possible but in no event after the time when the response to the subpoena or order is due). Should the producing party give notice of such intent, the subpoenaed party shall take steps reasonable and necessary to withhold production while the motion is pending. Provided, however, that nothing in this Order shall be construed to require a party or person to violate or refuse to comply with valid court orders of any court, or with the rules of procedure of any court.

G. NONTERMINATION

The provisions of this Order shall survive any settlement, judgment or other disposition or conclusion of this action, and all appeals therefrom, and this Court shall retain continuing jurisdiction in order to enforce the terms of this Order. Within one hundred and twenty (120) days after final conclusion of all aspects of this litigation, including any appeals which may be filed, each party will make available for retrieval by the producing party at receiving counsel's place

of business all documents, including copies, received from the other party during the course of this litigation which constitute Discovery Material and are in the files of all attorneys and any other persons who have possession of such matter. All notes, memoranda, summaries, or other materials setting forth, summarizing, or paraphrasing Discovery Material obtained from the other party shall also be destroyed, except that counsel of record for each party may maintain in their files customary copies of each pleading, motion, order, or brief filed with the Court, and their customary attorney work product, correspondence and other case files. All counsel of record shall certify in writing their own compliance with this paragraph and that they are not aware, after reasonable inquiry, of any violations of this paragraph by clients, experts, or others to whom Discovery Materials have been disclosed, and not more than one hundred and twenty (120) days after final termination of this litigation shall deliver to counsel for the producing party said certifications.

H. NO WAIVER

The inadvertent disclosure of privileged documents and/or information by a producing person or party or its counsel shall not constitute a waiver of any applicable privilege. A producing person that inadvertently discloses documents or information it claims to be covered by a privilege shall give notice promptly after discovery of the inadvertent disclosure that the document or information is privileged. Upon receipt of such notice, if the person to whom such information was disclosed seeks to challenge the claim of privilege or lack of waiver, the notice and motion procedures set forth in paragraph I, below, shall apply. If the claim of privilege is upheld, the documents or information shall be returned on request of the producing person or counsel. In addition, the disclosure of Restricted Information pursuant to the procedures set forth in this Order does not constitute a waiver of any trade secret or any intellectual property, proprietary, or other rights to, or in, such information. It is expressly acknowledged that no such right or interests shall

be affected in any way by production of Discovery Material designated Restricted Information in this litigation.

I. DISPUTES

If a dispute arises regarding the applicability of the provisions of this Order, the affected parties shall make good faith efforts to resolve the dispute without intervention of the Court. A party that objects to another person's designation of Discovery Material as Restricted Information hereunder shall give the party who designated such information as Restricted Information and all parties to this litigation written notice of such objection, including a specific designation of the Discovery Materials to which objection is raised and an explanation of the basis for objection. Counsel shall confer within seven (7) business days of such objection to attempt to resolve the dispute. In the event that the dispute is not resolved through such conference, the producing person shall have ten (10) business days following counsel's "effort to resolve" conference regarding the objection to move for an order designating the Discovery Material as "Restricted Information" for purposes of this Order. In ruling on such a motion, the burden shall be on the party seeking to preserve confidentiality to establish the confidential, private or proprietary nature of the Restricted Information. While such a motion is pending, no disclosure of the Restricted Information may be made except in accordance with this Order, and the document or information will be treated as Restricted Information. Failure to file such a motion within ten (10) business days following counsel's "effort to resolve" conference shall constitute a waiver of the right to designate the Discovery Material as "Restricted Information" under this Protective Order, and the Discovery Material to which an objection was made shall no longer be treated as Restricted Information.

J. MODIFICATION

Any party may at any time and for any reason may seek modification of this Protective Order. This Protective Order can be modified only by written agreement of the parties or by Order of this Court. Each party reserves the right to object to any party's motion or request to modify this Protective Order. The parties shall review this Protective Order within thirty days of the Court's order regarding class certification to determine whether the terms of this Protective Order continue to be appropriate for the second phase of this litigation. If appropriate, the parties shall seek modification of this Protective Order.

K. RIGHT TO REACH FURTHER AGREEMENT

The parties have not reached a meeting of the minds regarding various provisions of this Order, including the designation of certain documents as "Confidential" and the disclosure of Confidential Information and/or Restricted Information. The parties have executed this Order in an effort to attempt to meet the scheduling deadlines imposed by this Court. The parties will abide by such restrictions unless and until modifications are agreed to by the parties or a further Order by the Court has been entered. The parties will continue to work together to attempt to resolve any differences. However, either party has the right to seek a further Order from the Court. Finally, by signing this Order, no party waives any argument that could be made regarding the appropriateness of any provision within this Order.

SO STIPULATED:

SEDEY & RAY, P.C.

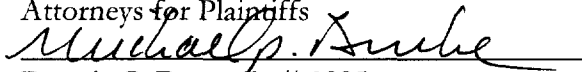
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Attorneys for Defendant Union Pacific Railroad Company

SO ORDERED:

DATED THIS 27th day of December, 2002.



United States District Judge

EXHIBIT A

UNDERTAKING

The undersigned has read the annexed Protective Order, understands its contents, and hereby undertakes to make no disclosures of any Discovery Material (including Restricted Information), as that term is defined in the annexed Protective Order, to any person who is not permitted to have access to such Discovery Material by the Protective Order or by subsequent orders of the Court. In addition, the undersigned agrees not to use such Discovery Material for any purpose whatsoever other than in connection with this action, except as permitted by subsequent orders of the Court. The undersigned also agrees, as required by paragraph G of the annexed Protective Order, either to return all Discovery Material supplied by any party, directly or indirectly, and all copies thereof and all notes or other transcriptions made therefrom, to the party producing the Discovery Material, or to destroy all copies of all Discovery Material, including any notes or other transcriptions made therefrom (except such copies or notes as are specifically permitted to be retained by paragraph G of the annexed Protective Order), within one hundred and twenty (120) days of the conclusion of this action and any appeals thereof. The undersigned understands that a violation of this undertaking may be punishable as contempt of court.

DATE: _____

NAME: _____
(print or type)

SIGNATURE: _____

UNITED STATES DISTRICT COURT -- EASTERN MISSOURI
INTERNAL RECORD KEEPING

AN ORDER, JUDGMENT OR ENDORSEMENT WAS SCANNED, FAXED AND/OR MAILED TO THE
FOLLOWING INDIVIDUALS ON 12/27/02 by cahring

4:02cv615 Yapp vs Union Pacific RR Co

42:2000e Job Discrimination (Employment)

Michael Burke - 2748	Fax: 314-259-2020
Rocco Calamusa -	Fax: 205-254-1500
Robert Childs -	Fax: 205-254-1500
Dennis Donnelly - 2995	Fax: 314-259-2020
Douglas Herbert -	Fax: 202-659-2435
Deborah Mattison -	Fax: 205-254-1500
Timothy Mooney - 85574	Fax: 314-259-2020
Jon Ray - 47757	Fax: 314-773-3615
Mary Anne Sedey - 5124	Fax: 314-773-3615
Robert Wiggins -	Fax: 205-254-1500

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