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Saturday, August 15, 1987

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

EUREKA SOUTHERN RAILROAD CO., INC.,

No. 1-86-01976

[Debtor](#) .

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### **ORDER RE TRUSTEE'S FEES**

The Trustee in this case has filed a fee application seeking compensation in the amount of \$55,275.00 for the period from January 16, 1987, to June 10, 1987. He computes this amount using his hourly rate of \$150.00 as a railroad consultant. If the fees were computed in accordance with section 326(a) of the [Bankruptcy Code](#) , he would be entitled to \$28,252.00. The issue before the court is whether the trustee in a railroad case is subject to the fee cap set forth in section 326(a). The Trustee argues that trustee's fees in railroad cases have historically not been subject to regular bankruptcy limitations, citing several pre-1979 cases. However, section 1161 of the Code recites those sections of general bankruptcy law not applicable to railroad cases, and section 326 is not among them. The court must therefore [assume](#)  that section 326(a) limits the Trustee's compensation in this case.

Section 327 does authorize the employment of professionals to assist the trustee in the administration of the estate. In cases where the trustee is an attorney or accountant, the law authorizes self-employment and in such cases the trustee may be compensated at the normal rate for such professionals notwithstanding section 326(a). 11 U.S.C. section 327(d); [In re Fabric Stylesetters, Inc.](#) (Bkrtcy.S.D.N.Y.1981) 8 B.R. 872. However, compensation is to be paid at the higher rate only for work which is clearly not the normal responsibility of a

trustee, and only if court authorization was obtained beforehand. Where a trustee who is an attorney renders legal services before obtaining leave of court to employ himself as an attorney, he cannot recover more than the statutory trustee's maximum. In re Thibodeau (Bkrtcy.D.C.Me.1982) 20 B.R. 107. Because of the special aspects of a railroad reorganization case, the court might be persuaded to treat a request for consulting fees in the same way as attorney's fees are treated pursuant to section 327(d) where the trustee is an attorney. Even if the court were so persuaded, however, it cannot grant the fees sought here because the Trustee did not seek prior leave to employ himself as a consultant and because much of the duties performed by the Trustee were a normal part of his responsibilities and are therefore not compensable at the consultant's rate. IT IS THEREFORE ORDERED that the Trustee is allowed compensation for services rendered through June 10, 1987, in the amount of \$28,252.00, less \$15,000.00 previously paid.

Dated: August 15, 1987

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ALAN JAROSLOVSKY

U.S. [BANKRUPTCY JUDGE](#) 

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