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Chief, Section of Administration
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Surface Transportation Board
395 E Street SW Suite 100
Washington, DC 20004

RE: Finance Docket No. 33556 (Sub-No. 5)
CANADIAN NATIONAL RAILWAY, GRAND TRUNK CORPORATION, GRAND TRUNK WESTERN RAILROAD COMPANY INCORPORATED – CONTROL – ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, etc. (Arbitration Review)

Dear Sir or Madam:

Pursuant to the Decision of the Board served April 7, 2011, enclosed for filing is are nine bound copies and one unbound copy of the submissions filed by the American Train Dispatchers Association ("ATDA") in the arbitration proceeding leading to the Award here under review. These filings are in three volumes:

Volume I - ATDA's Pre-Hearing Submission and Exhibit 1

Volume II - ATDA's Pre-Hearing Submission Exhibits 2-15

Volume III - ATDA's Pre-Hearing Submission Exhibit 16; ATDA's Post-Hearing Brief and Exhibits 17-18; ATDA's Post-Hearing Reply Brief and Exhibit 19.

A Table of Contents identifying every part of each filing is at the front of Volume I.

The Submissions filed by the Carriers and the Illinois Central Train Dispatchers Association ("ICTDA") have been filed with the Board by the Carrier.

The Board's Decision also directed the parties to "provide page number citations to any specific evidence in the arbitration record regarding any measures CN took or did not take to consolidate its dispatching systems at issue through upgrades or otherwise." The evidence presented on this subject is set forth in the Board's approval decision (Carrier submission PO161), explained in ATDA's Pre-Hearing Submission (R12), Post-Hearing Brief (R-425 - R-426), and Post-Hearing Reply Brief (R-488 - R-490); and in the Verified Declarations of Roger Frasure, which the Carrier submitted as Exhibit J to its Post-Hearing Brief (PO828)and Exhibit B to its Response to the ATDA's Post-Hearing Brief (PO859).

Sincerely yours,

Michael S. Wolly
Counsel for ATDA

cc w/ encl.: Robert Hawkins, Attorney for the Carrier
Joseph R. Mazzone, Attorney for ICTDA

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BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 33556, Sub No. ~~6~~ 5

CANADIAN NATIONAL RAILWAY, GRAND TRUNK CORPORATION, GRAND TRUNK WESTERN RAILROAD COMPANY INCORPORATED – CONTROL – ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, etc.

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ARBITRATION SUBMISSIONS OF RESPONDENT AMERICAN TRAIN DISPATCHERS ASSOCIATION

VOLUME I

(Pages R-1 - R-202)

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April 14, 2011

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BEFORE AN ARBITRATOR ACTING PURSUANT TO THE NEW YORK DOCK CONDITIONS ARTICLE I, SECTION 4

Don A. Hampton, Arbitrator

In the Matter of:

SURFACE TRANSPORTATION BOARD Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY, GRAND TRUNK CORPORATION, GRAND TRUNK WESTERN RAILROAD COMPANY INCORPORATED – CONTROL – ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, etc.

Dispute Over Transfer of Train Dispatching Work

PRE-HEARING SUBMISSION OF THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

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1	ATDA-GTW collective bargaining agreement
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3	*Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated – Control – Illinois Central Corporation, Illinois Central Railroad Company, etc.*, 4 STB 122 (1999) (Decision No. 37) [RELEVANT EXCERPTS]
4	The *New York Dock* Conditions
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15	ATDA/CSXT Separation Allowance Agreement
16	*Consolidated Rail Corporation and Monongahela Railway Company and UTU*, F.D. No. 31875 (LaRocco 1992)

PRE-HEARING SUBMISSION OF THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

The Parties

The Canadian National Railway Company ("CN") is a Canadian corporation doing business in the United States on lines of the former Illinois Central Railroad ("IC"), the Wisconsin Central Railroad ("WC"), and the Grand Trunk Western Railroad ("GTW"). The American Train Dispatchers Association (hereafter "ATDA") is the exclusive collective bargaining representative for the employees of both the GTW and WC in the craft or class of train dispatchers. The train dispatchers employed on the former IC are represented by the Illinois Central Train Dispatchers Association ("ICTDA"), which is not affiliated with ATDA. There are presently 17 active GTW train dispatchers, 26 active WC train dispatchers, and 37 active IC train dispatchers.

There are collective bargaining agreements in place between ATDA and GTW and ICTDA and IC. (Exhibits 1 and 2 hereto) ATDA and WC are in the process of negotiating an initial CBA.

Prior to acquiring IC, CN operated in the United States through its subsidiary GTW. On May 21, 1999, the Surface Transportation Board authorized the acquisition by CN and GTW of control of IC and the integration of CN and IC rail operations. *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated – Control – Illinois Central Corporation, Illinois Central Railroad Company, etc.*, 4 STB 122 (1999) (Decision No. 37) (Exhibit 3 hereto). As outlined in its decision, the STB conditioned its approval of this transaction on compliance by the carriers with the New York Dock Conditions.[1] 4 STB at 128, 144. As a result, any transactions which CN or GTW undertake pursuant to the STB's grant of authority to purchase the GTW are subject to Article I, Section 4 of the New York Dock Conditions.

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[1] *New York Dock Ry. - Control - Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84-90 (1979)("*New York Dock*"), *aff'd sub nom., New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979). The *New York Dock* Conditions are Exhibit 4 hereto.

The Transaction

On February 3, 2009, CN served notice on ATDA of the carrier's intent to abolish all 16 GTW train dispatching positions at Troy, MI, establish 10 new train dispatching positions at Homewood, IL, and thereafter have all train dispatching on former GTW lines handled by the newly created positions at Homewood. Specifically, the carrier's Notice stated:

> It is necessary to consolidate the train dispatching operation of the [GTW] and the [IC] into one location. The consolidation will result in the abolishment of sixteen (16) GTW dispatcher positions at Troy, Michigan. Ten (10) dispatcher positions will be established at Homewood, Illinois. The reason for the consolidation is to provide increased efficiency and better utilization of the dispatchers at Homewood.

Exhibit 5.

After the Carrier served its Notice, the parties then entered into the implementing agreement bargaining process provided in *New York Dock* Article I, Section 4. At least that's what ATDA thought would happen. Instead, the Carrier did not bargain. When ATDA responded with a counter to CN/IC's opening proposal, the Carrier refused to discuss it. Then, in its only other proposal, the Carrier withdrew what it had offered earlier and gave the ATDA a document that proposed nothing more than *New York Dock* itself.

The chronology of the ATDA and CN/IC proposals was as follows:

4/15 Carrier opening proposal
7/25 ATDA counterproposal (rejected by Carrier without discussion)
8/27 Carrier final offer[2]
8/31 ATDA counter final offer

The parties' respective proposals are Exhibits 6-9 hereto.[3] Not surprisingly, the parties did not arrive at an agreement because there was no bargaining in the sense contemplated by *New York Dock*.

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[2] CN/IC emailed two proposals on August 27. The second merely changed typographical errors in the first.

[3] The ICTDA presented the Carrier with a proposal on August 26, 2009, but withdrew it two days later.

The obvious purpose of the bargaining requirement in Section 4 is that the parties narrow their differences in an effort to arrive at an implementing agreement. Here, rather than do that, in its last proposal after invoking arbitration, the carrier withdrew all enhancements and reverted to "barebones" *New York Dock* in a blatant attempt to tie the hands of the arbitrator.[4] Faced with such regressive bargaining, ATDA reiterated what was essentially its previous proposal, the same proposal it requests that the Arbitrator adopt as the most reasonable and most consistent with purposes of *New York Dock.*

CN/IC is not merging the GTW and IC rail traffic control systems. Rather, it is moving the GTW control system from Troy to a building at Homewood where IC and WC dispatchers already work. When that happens all of the dispatchers will be under one roof, but they will not be running a single transportation system. Rather, the Carrier will continue to operate three separate rail systems, only now they will be operated out of one facility.[5]

As ATDA understands it, there is no disagreement that the STB's approval allows CN to transfer the work of dispatching over the GTW system from Troy to Homewood and that *New*

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[4] The Carrier had previously proposed that each transferring employee receive this relocation option: (a) a $20,000 relocation package comprised of a $10,000 lump sum relocation payment plus an additional $10,000 upon sale of his/her residence, or (b) a monthly reimbursement of $1,300 for rent, utility, parking expenses for two years after the transfer (total: $31,200). In addition, CN offered to give every transferring employee a $500 lump sum payment for every transferee to cover the expenses associated with house hunting. Ex. 6.

[5] Whether this is to keep the ICTDA train dispatchers independent from ATDA is not known. However, under the representation processes of the Railway Labor Act, representatives are certified for entire rail systems and the National Mediation Board will only extinguish a representative's status when a system no longer exists. It is to CN/IC's advantage to delay the day when the NMB can declare a single system exists until after this transaction occurs, so the carrier can eliminate jobs covered by the ATDA agreements and certifications. Presently, the ATDA-represented GTW and WC dispatchers outnumber the ICTDA-represented dispatchers 43-37. When this transfer of work occurs, there will be seven fewer ATDA-represented active employees, assuming all 10 positions being transferred to Homewood are filled by former Troy –based dispatchers.

Furthermore, CN/IC currently has an agreement with ICTDA that, unlike the GTW-ATDA agreement, contains no union security provision and provides no wage increases for five years. The Carrier apparently believes these terms, among others, are more advantageous to management.

York Dock sets the bare minimum level of protection that must be afforded the employees affected by that transaction. By its last proposal, the Carrier intends that minimum to be the maximum as well.

THE ISSUES IN DISPUTE[6]

1. Whether employees willing to transfer to Homewood to work positions that dispatch trains over GTW trackage should be given priority over existing employees at Homewood to bid positions that perform those functions. *ATDA proposes that they should be.*

2. Whether the employees transferring to Homewood should be dovetailed on the existing seniority roster at Homewood or should remain on a separate seniority roster of employees handling dispatching over GTW trackage. *ATDA proposes the latter.*

3. Whether employees whose positions at Troy are abolished but who are not awarded positions at Homewood initially should retain rights to bid on vacancies that later occur at Homewood in positions dispatching trains over GTW trackage and be able to move to take those positions on the same terms and conditions available to those GTW employees who successfully bid the positions initially. *ATDA proposes that they should.*

4. Whether GTW train dispatchers who exercise their seniority to obtain a TCIU/GTW position should be considered eligible for a displacement allowance in accordance with Article I, Section 5 of New York Dock. *ATDA proposes that they should.*

5. Whether the carrier should provide employment assistance for the spouses of the relocating train dispatchers at no cost to the employee or spouse. *ATDA proposes that it should.*

6. Whether the rates of pay in effect for GTW train dispatchers at the time of the relocation should be increased by ten percent (10%) in recognition of the increased cost of living in the Homewood area. *ATDA proposes that they should.*

7. Whether GTW employees should be allowed five (5) days with pay for the purpose of locating a residence in the Homewood area, with travel expenses associated with house-hunting trips paid by the carrier. *ATDA proposes that they should.*

8. Whether the Carrier should offer separation allowances to Troy dispatchers as an alternative to their moving. *ATDA proposes that it should offer at least eight separation allowances.*

9. Whether employees who transfer to Homewood should be given the option of accepting lump sum monetary relocation packages in lieu of the moving and real estate provisions set forth in *NYD* Sections 9 and 12. *ATDA proposes that they should.*

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[6] There is no disagreement between the parties that the positions being created at Homewood will be posted and subjected to seniority based bidding by the Troy dispatchers; that every GTW train dispatcher will be eligible for a displacement or dismissal allowance under *NYD* as a result of the consolidation; and that employees entitled to benefits under another job security arrangement must elect which benefits to receive; and that there be no pyramiding of benefits. ATDA Proposal ¶s 2, 3, 6, 7, 8, 10; Carrier proposal ¶s 2, 3, 4, 8, 9, 10.

ARGUMENT

A. The Principles Applicable to this Arbitration.

An arbitrator creating an implementing agreement under Article I, Section 4, is required to comply with *New York Dock* itself as well as the decisions of the Surface Transportation Board applying those Conditions. In that regard, the arbitrator must be cognizant of the STB's observations when imposing the Conditions.

In this case, when it approved the CN-IC merger, the STB "augmented" the labor protective conditions. 4 STB at 144. Most importantly, the Board addressed both the issue of CBA changes and modification of benefits. The Board explained that while "[t]he basic framework for mitigating the labor impacts of rail consolidations is embodied in the *New York Dock* conditions...[w]e may tailor employee protective conditions to the special circumstances of a particular case." *Id.* at 162. The Board observed that "[t]his is done where unusual circumstances require more stringent protection than the level mandated in our usual conditions" and that the circumstances of the CN-IC merger were such that they warranted "grant[ing] certain requests to modify or clarify our basic conditions." *Id.*

The Board was particularly receptive to rail labor's concerns regarding possible changes that the carriers might propose in collective bargaining agreements. It

> admonish[ed] the parties to bargain in good faith to embody implementing agreements in CBAs rather than having such agreements arbitrally imposed. Good faith bargaining has always been an integral component of the *New York Dock* process. Applicants conceded at oral argument that the arbitrator, and the Board, if necessary, could properly take notice of any abuse of process in their deliberations.

In the Board approval proceeding, ATDA had raised an issue as to the continued application of certain ATDA agreements under which some ATDA-represented employees received "lifetime protection." The Board found those issues "not yet ripe" and referred the parties to the implementing agreement process. In so doing, it explained:

> Only if that process fails, and applicants claim that changes need to be made in these CBAs, will it be necessary for an arbitrator to rule on these issues in the first instance. And those arbitrators will be constrained in this process not to change

> any protected "rights, privileges, and benefits," and only to make those changes that are necessary to carry out this transaction as significantly limited by the Board in *Carmen III.*

Id. at 164. The Board reiterated that "due to the end-to-end nature of the proposed transaction, applicants themselves have acknowledged that implementation of the CN/IC control transaction will require at the most only modest adjustments to existing CBAs." *Id.* at n. 101.

Nevertheless, *NYD* Article I, Section 4 provides "Each transaction which may result in a dismissal or displacement of employees, or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4." This transaction clearly will result in employees being displaced or dismissed and forces being rearranged, so the arbitrator must find an appropriate basis for the selection of forces and assignment of employees to perform the GTW work being transferred to Homewood. That includes consideration of working agreements, seniority and prior rights, among other things.

The rulings in the STB's approval decision are consistent with holding sin earlier cases that overriding CBAs may happen in *NYD* situations "only when necessary – not merely convenient – to effect an approved transaction and realize a transportation benefit such as enhanced efficiency or greater safety." *Burlington Northern Santa Fe Railway Company and Brotherhood of Maintenance of Way Employes*, F.D. No. 32549 (Sickles, March 25, 1999)(Exhibit 14), p. 21.

Then the arbitrator also must weigh the parties' competing benefits proposals. The items ATDA seeks are clearly within the jurisdiction of a NYD arbitrator to grant. *Chicago and North Western Transportation Company - Abandonment - Near Dubuque and Oelwein, IA*, 3 I.C.C.2d 729 (1987) ("*Lace Curtain*"), *affd. sub nom. Intl. Brotherhood of Electrical Workers v. ICC*, 862 F.2d 330 (D.C. Cir. 1988) (Exhibit 11). In *Lace Curtain*, the Commission explained that particular benefits need not be "specifically provided for" in the imposed Conditions to be

permissible; the Commission (now STB) will approve them if they are "within the context and spirit" of the Conditions. *Id.* at 736. Thus, an arbitrator's awarding of additional sums in that case to set up a household (a so-called "lace curtain allowance"), reimbursement of a real estate commission and mortgage interest, and judgment-type interest to compensate for delay in payment was upheld, "[g]iven the leeway the [arbitrator] has to consider industry practice [and] so long as the [arbitrator] is interpreting and applying the [Conditions] and not dispensing its 'own brand of industrial policy.'" *Id.* Similarly, where the parties consent to have a particular benefit decided by the arbitrator, it is not beyond the arbitrator's authority to select which party's position best reflects the purpose behind the imposed conditions. *Id.* at 737.

B. ATDA's Proposed Terms Should Be Included in the Implementing Agreement.

1. Employees willing to transfer to Homewood to work positions that dispatch trains over GTW trackage should be given priority over existing employees at Homewood to bid positions that perform those functions.

ATDA proposes that the dispatchers transferring to Homewood retain prior rights to perform all work on GTW trackage unless they bid to a position not covered by the ATDA-GTW agreements or they resign, retire, become dismissed from service, or are promoted. ATDA Proposal ¶ 7. Granting them equity in this work preserves for them the right to continue working should there be future layoffs in Homewood caused by reductions in work unrelated to the GTW transaction. Furthermore, they are the dispatchers who transferred to Homewood specifically to perform the work.

CN/IC would only grant prior rights to the transferred *positions*, not the transferred *work*. Carrier Proposal ¶ 6. Under the Carrier's proposal, the GTW work would be open to other dispatchers at Homewood working under the ICTDA agreement. That proposal should be rejected. As noted above, the STB has directed that collective bargaining agreements should be honored unless a carrier can show it is necessary to consummation of a transaction to override them. No such necessity is present here. ATDA's agreements govern the assignment of work

over GTW tracks. The Carrier has no current plan to operate over the GTW, IC, and WC tracks as a single system. Consequently, it is not necessary to eliminate the Troy dispatchers' exclusive rights to dispatch trains over the GTW tracks. Similarly, ATDA does not advocate granting GTW dispatchers rights to dispatch trains over IC tracks, or GTW dispatchers to dispatch trains over WC tracks. Only if no GTW dispatcher is available to perform dispatching work over GTW tracks (including GTW train dispatchers who are still in Troy and have not yet been able to transfer) should the Carrier be permitted to assign that work to the IC dispatchers who have no previous connection to these lines.

2. Employees transferring to Homewood should remain on a separate seniority roster of employees handling dispatching over GTW trackage and continue to work under the ATDA agreements.

Because the GTW system is not being integrated with the rest of the CN/IC system, there is no good reason to integrate seniority rosters or eliminate collective bargaining agreements at this time. Again, the Carrier has no current plan to operate over the GTW, IC, and WC tracks as a single system. Until such operational change actually happens, GTW should be required to continue to treat the GTW dispatchers as they did before the transfer, carrying them on a separate seniority roster covered by the carrier's existing agreements with ATDA. ATDA's Proposal ¶ 5 provides for such continuity "until such time as a single Agreement is reached covering all ATDA-represented train dispatchers working at Homewood."[7]

The Carrier would have the arbitrator require that the GTW dispatchers abandon their CBA and union representation and fall under the ICTDA agreement.[8] Its only rationale for forcing the GTW dispatchers to relinquish their CBA rights is that the Carrier considers it more

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[7] ATDA is not proposing that the implementing agreement in any way affect the jurisdiction of the ICTDA to represent train dispatchers on the former IC lines. As the Carrier is not integrating all lines into a single system for train dispatching purposes, there is no need for the arbitrator to consider changes to ICTDA existing agreement jurisdiction.

[8] As pointed out earlier, that CBA is considerably different from the ATDA-GTW agreement.

efficient to operate under the ICTDA agreement. But that is not the proper criteria for the arbitrator to apply. The Carrier bears the burden of proving that supplanting the ATDA agreement is "necessary." Merely evoking the word "efficiency" is not enough. The Carrier must actually demonstrate why continuing under the existing agreement will substantially interfere with the purposes of the transaction. *Burlington Northern Santa Fe Railway Company and Brotherhood of Maintenance of Way Employes, supra*, Ex. 14 at 21, 32 . It has not done so here.

In the *BNSF/BMWE* dispute, the carrier moved groups of employees working under different agreements and attempted to use *NYD* to place them all under the same agreement. The arbitrator rejected that proposal, pointing out:

> an arbitrator may modify CBA provisions only when necessary to achieve a transportation benefit. The Carrier has failed to demonstrate that all headquartered employees in the consolidated zones must work under a single CBA. That proposal falls squarely under the category of "convenient, but not necessary." Therefore, the BMWE's proposal that all headquartered employees in Amarillo, Chicago, Fort Worth, Galesburg, Kansas City, and Oklahoma City would continue to work under their respective shall be adopted.

Id. at 32.

By contrast, in *Consolidated Rail Corporation and Monongahela Railway Company and UTU*, F.D. No. 31875 (LaRocco 1992)(Exhibit 16), the transaction was resulting in the total elimination of one of two former systems as the two systems became "homogenous [and] there will not be any interchange between [the two] because, pursuant to the ICC's authorization, they will henceforth constitute one railroad." There, "the absence of separate and distinct train operations" led the arbitrator to eliminate one of the agreements. *Id.* at 15-16. That is not the situation here, as CN is not completely integrating its GTW and IC operations.

Furthermore, the STB has clearly held that "rights, privileges and benefits" currently enjoyed by employees affected by a transaction must be preserved. Insofar as the ICTDA agreement provides lesser benefits than the ATDA-GTW agreement, the implementing agreement that results from this arbitration may not override them.

3. Employees whose positions at Troy are abolished but who are not awarded positions at Homewood initially should retain rights to bid on vacancies that later occur at Homewood in positions dispatching trains over GTW trackage and be able to move to take those positions on the same terms and conditions available to those GTW employees who successfully bid the positions initially.

The Carrier has decided to transfer only 10 of the 16 dispatching positions from Troy to Homewood. The six dispatchers who do not transfer now will be receiving dismissal or displacement allowances depending on whether they are able to hold other positions in other crafts. These employees should however retain the right to bid on positions at Homewood that dispatch trains over GTW tracks as those positions become vacant or if new positions doing that work are created. ATDA Proposal ¶ 2. Should that occur and a GTW dispatcher who remains at Troy exercises his/her seniority to take one of those positions, he/she should be allowed to transfer under the same terms and conditions that the arbitrator determines should apply to the filling of the 10 positions initially. *Id.* In this way, each of the 16 GTW dispatchers will be afforded an opportunity to follow his/her work to Homewood. This is a fair and equitable proposal that not only allows these dispatchers to continue working in the craft as opportunities arise, it also provides the carrier with a source of experience it would not otherwise have available.

4. GTW train dispatchers who exercise their seniority to obtain a TCIU/GTW position should be considered eligible for a displacement allowance in accordance with Article I, Section 5 of New York Dock.

Some of the 16 GTW dispatchers also maintain seniority in the clerks' craft or class under the collective bargaining agreement between GTW and the Transportation-Communications International Union. If they are forced to exercise this seniority in order to continue working as a result of this transaction, they should be entitled to a displacement allowance to account for the reduction in compensation that likely will occur as a result.[9] ATDA Proposal ¶ 4.

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[9] However, their working in another craft in these circumstances should be without prejudice to their right to bid on any dispatcher position that later opens up at Homewood to perform dispatching over GTW trackage that they would have performed under the ATDA/GTW

5. The rates of pay in effect for GTW train dispatchers at the time of the relocation should be increased by ten percent (10%) in recognition of the increased cost of living in the Homewood area.

GTW train dispatchers who work at Troy currently earn an annual base pay of $75,175.83 ($288.03 per day x 261 days). But they do not live in Troy. They live primarily in Pontiac, MI, because that is the locality where the GTW dispatching office was when they were hired. Later, in 1997, GTW moved the dispatching office to Troy but refused to provide any real estate or moving benefits because Troy is within a 30-mile radius of Pontiac. Without such benefits, the dispatchers had little incentive to change their residences. Now, in order to work at Homewood, they will have to do so.

The arbitrator can and should take notice of the fact that location is a key factor in determining how much employees are paid. That's because costs of living differ from one geographic area to another. As reported at www.bestplaces.net, a website providing cost-of-living comparisons, living in Homewood is overall 28.4% more expensive than living in Pontiac. Exhibit 12. Here is how generally accepted costs compare in the two localities:

Cost of Living Indexes	Pontiac	Homewood
Overall	74	95
Food	106.3	105
Housing	28	69
Utilities	88	105
Transportation	104	119
Health	113	116
Miscellaneous	96	107

100 = U.S. national average

Housing is the biggest factor in the cost of living difference; housing is 2.5 times more expensive

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agreement at Troy but for the transaction. As noted above, this arrangement would allow these employees to retain a connection to the dispatching craft without penalty. Only if they later are offered a paid transfer and reject it should their continued rights to dispatcher positions and their displacement allowances be affected.

in Homewood. *Id.*

Thus, by moving to Homewood, GTW train dispatchers will face living in a much more costly community. In order to maintain the same standard of living in Homewood as he/she has in Pontiac, a GTW train dispatcher currently earning **$75,176** would have to earn **$96,526** in Homewood. Under the ICTDA agreement at Homewood, the Carrier pays experienced train dispatchers $75,000.

ATDA recognizes that sometimes it is impossible to wholly replicate wage standards when moving from one part of the country to another. That is why during bargaining over an implementing agreement the union made a modest proposal that would cushion the economic blow without creating a vast wage disparity with the IC train dispatchers already working at Homewood. That proposal (ATDA Proposal Second Side Letter), which we urge be adopted here, is that Carrier provide the transferring GTW dispatchers a 10% pay supplement in order to partially protect them from the devastating impact the move will have on their existing standard of living. By contrast, the carrier offers nothing to compensate for this difference.

That ATDA's position is reasonable is confirmed by independent outside experts. The Forty-second Annual Corporate Relocation Survey of corporate officers responsible for relocating employees conducted by Atlas found that in 2008:

> Most firms, regardless of size, offered additional incentives to encourage employee relocations last year. Among firms offering incentives, roughly two-thirds (regardless of size) offered cost-of-living adjustments (COLAs) in salary at the new location, and more than half offered relocation bonuses. For the vast majority of firms (8 out of 10 or more), regardless of size, additional incentives proved "almost always" or "frequently" successful in convincing an employee to relocate.
>
> - Regional firms are less likely than national and international firms to have offered additional incentives (48% vs. 67% and 61%).
>
> - National firms offered COLAs and relocation bonuses with similar frequency (64% and 65%), but regional and

international firms report they are more likely to have offered COLAs than relocation bonuses (58% vs. 48% and 69% vs. 55% respectively).

- Manufacturing/processing firms offered COLAs and relocation bonuses with similar frequency (63% and 66%), while for-profit service firms are more likely to have offered COLAs than relocation bonuses (67% vs. 51%).

Exhibit 12, p. 4.[10] CN is an international firm. There can be no doubt that providing this assistance to cushion the effects of the transaction on the transferring employees is consistent with the requirement that they move to the costlier location in order to continue working in their chosen occupation.

6. The carrier should provide employment assistance for the spouses of the relocating train dispatchers at no cost to the employee or spouse.

It is common knowledge that in today's economy, in many families both spouses are employed outside the home to enable the family to make ends meet. According to the Atlas Relocation Survey, 61% of large firms offer employment assistance to a relocating employee's spouse or partner. Exhibit 12, p. 10.

The carrier's plan to uproot dispatchers takes no account of this fact. ATDA proposes that those husbands and wives who must give up their jobs in order to accompany their spouses to the new carrier location should receive assistance from the carrier in finding new employment. ATDA Proposal Third Side Letter. This should take the form of job counseling and placement service for a period of six months before and six months after an employee moves to Homewood.

[10] The survey is also available online at www.atlasworldgroup.com/survey.

7. Employees who successfully bid positions at Homewood should be allowed five (5) days with pay for the purpose of locating a residence in the Homewood area, with travel expenses associated with house-hunting trips paid by the carrier.

Affording employees paid time off to find new housing at new location is not unusual. Nor is a stipend to cover expenses associated with house hunting trips.

The Atlas Relocation Survey indicates that 68% of respondents paid homeowners and 61% paid renters for home-finding trips. Exhibit 12, p. 9, 22. Those percentages increased to 86% and 81% when responses from just the largest companies were considered. *Id.* at 22-23. On average, the respondent corporations allotted 1.6 expense-paid house-hunting trips to relocating employees' spouse/partner and allowed 4.9 expense paid days for employees for such trips. Exhibit 12, p. 21.

ATDA proposes that transferring employees be allowed five paid days to search for new housing, which may be split between up to two house hunting trips and which shall be scheduled in conjunction with the employee's rest days. In addition, the Carrier should pay for all travel expenses associated with such trips or a $2,500 lump sum, at the employee's option. ATDA Proposal First Side Letter. We submit that this is fair and reasonable. CN/IC, by contrast, offers nothing on this item.

8. The Carrier should offer at least eight separation allowances to Troy dispatchers as an alternative to their moving.

ATDA is proposing that the Carrier offer at least eight separation allowances to the train dispatcher at Troy. CN/IC has offered none. These allowances would be calculated in accordance with Article I, Section 7 of *NYD* and offered in seniority order. Because the skills associated with train dispatching are very specialized and are not easily transferrable to non-railroad positions, such separation allowances would bridge senior employees to retirement or enable those forced to find employment outside the industry not to suffer loss of income if they

have to take jobs, as they likely would, that pay them less.

The offering of such separation allowances, often called buy-outs, have become a common element of railroad industry implementing agreements. CN provided such allowances to Duluth, Missabe and Iron Range Railway Company train dispatchers when it transferred their work and abolished positions in 2005 in connection with CN's acquisition of the DM&IR. See Exhibit 13, p. 2. So did CSXT when it moved its dispatchers into a consolidated office. Exhibit 15.

9. Employees who transfer to Homewood should be given the option of accepting lump sum monetary relocation packages in lieu of the moving and real estate provisions set forth in *NYD* Sections 9 and 12.

Section 9 of *New York Dock* describes how employees who are required to move in order to continue employment will be reimbursed for expenses incurred in connection with moving. Section 12 of *New York Dock* describes how employees who are forced to sell their homes in connection with a move are to be reimbursed for possible losses suffered in connection with those home sales. It also provides for employees who rent their residences to be protected from costs associated with breaking leases.

It has become common practice in the industry for carriers engaging in *NYD* covered transactions to offer employees the option of accepting lump sum payments in lieu of going through the procedures outlined in Section 9 and 12. The Carrier here initially made such a provision part of its original proposal, then rescinded it when ATDA presented a counterproposal.

ATDA has proposed (Attachment B), like CN/IC did initially, that the Troy dispatchers be granted such an alternative. The Union's proposal is that all employees who relocate receive a $20,000 lump sum payment as an incentive to relocate; the Carrier offers nothing in this regard. In addition, the Union proposes that relocating employees who own homes receive $10,000 payable in five equal installments over a period of 15 months, provided they are in active service

at Homewood at the time each payment is due, plus "an additional $10,000 upon proof of sale, at fair market value, of their primary residence in the Troy area, and proof of relocation to a new primary residence within a reasonable distance of Homewood." An employee must relocate and sell his/her home within two years of the date of transfer in order to be eligible. This is the same as what the Carrier initially offered homeowners but then took off the table without discussion. ATDA would allow the employee to decline the additional $10,000 payment and opt to have the carrier purchase the home at the fair market value or the original purchase price, whichever is greater.

As for employees who decide to rent in the Homewood area, ATDA has proposed that they be reimbursed up to $1,500 per month for actual out-of-pocket rental costs (which "includes **only** the following items: monthly rent; the cost of a basic cable plan; monthly gas (heat) bill; monthly electric bill; and parking at your residence.") for up to 48 months[11] and would only be paid upon showing of proof that the expense was actually incurred.[12] ATDA's proposal does not allow this money to "be used for any other purpose, including but not limited to enrolling children in school, paying expenses for your present residence (or any other residence), or paying for any additional costs that might incur as a result of relocating."

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[11] The reimbursements would end when "the employee ceases to incur such expense; the employee violates any term of this relocation package; the employee's employment with the Company ends, whether voluntarily or otherwise; or the employee voluntarily chooses to transfer to another position within the Company. " The Union also proposes that the Carrier "pay the taxes for the rent reimbursement to the extent that it is considered ordinary income and subject to taxation" and report that on the employee's statement of earnings. This proposal is the same as what the Carrier offered initially.

[12] CN/IC's initial proposal was for $1,300 per month for up to two years. Otherwise ATDA's rent reimbursement proposal is identical.

CONCLUSION

For these reasons, the arbitrator should select ATDA's proposed implementing agreement as most consistent with the principles of *New York Dock* and the STB's approval decision.

Respectfully submitted,

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Attorney for ATDA

BEFORE AN ARBITRATOR ACTING PURSUANT TO THE NEW YORK DOCK CONDITIONS ARTICLE I, SECTION 4

Don A. Hampton, Arbitrator

In the Matter of:

SURFACE TRANSPORTATION BOARD Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY, GRAND TRUNK CORPORATION, GRAND TRUNK WESTERN RAILROAD COMPANY INCORPORATED – CONTROL – ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, etc.

Dispute Over Transfer of Train Dispatching Work

EXHIBITS 1-4 TO ATDA

PRE-HEARING SUBMISSION

LIST OF ATDA EXHIBITS

NUMBER	DESCRIPTION
1	ATDA-GTW collective bargaining agreement
2	ICTDA-IC collective bargaining agreement
3	*Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated – Control – Illinois Central Corporation, Illinois Central Railroad Company, etc.*, 4 STB 122 (1999) (Decision No. 37) [RELEVANT EXCERPTS]
4	The *New York Dock* Conditions
5	Carrier's February 4, 2009 *New York Dock* Notice
6	Carrier's April 16, 2009 Opening Proposal
7	ATDA's Counterproposal
8	Carrier's Response/Final Offer
9	ATDA's Second Counterproposal/Final Offer
10	*Chicago and North Western Transportation Company - Abandonment - Near Dubuque and Oelwein, IA*, 3 I.C.C.2d 729 (1987) ("*Lace Curtain*"), *affd. sub nom. Intl. Brotherhood of Electrical Workers v. ICC*, 862 F.2d 330 (D.C. Cir. 1988)
11	Cost of Living Comparison
12	Forty-second Annual Corporate Relocation Survey, Atlas World Group
13	ATDA/CN/Duluth, Missabe and Iron Range Railway Company Implementing Agreement
14	*Burlington Northern Santa Fe Railway Company and Brotherhood of Maintenance of Way Employes*, F.D. No. 32549 (Sickles, March 25, 1999)
15	ATDA/CSXT Separation Allowance Agreement
16	*Consolidated Rail Corporation and Monongahela Railway Company and UTU*, F.D. No. 31875 (LaRocco 1992)

ATDA EXHIBIT 1

CARRIER'S COMPILATION AGREEMENT EFFECTIVE JANUARY 1, 1955 AS REVISED BY SUBSEQUENT AGREEMENTS UP TO AND INCLUDING AGREEMENT DATED JULY 10, 1962.

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AGREEMENT BETWEEN THE GRAND TRUNK WESTERN RAILROAD COMPANY AND ITS TRAIN DISPATCHERS REPRESENTED BY THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

- - - - - - -

ARTICLE 1

(a) - Scope. Scope, Definitions

The term "train dispatcher" as used herein shall be understood to include assistant chief train dispatchers, trick train dispatchers, relief train dispatchers and extra train dispatchers.

(b) - Definitions.

1. Assistant Chief Train Dispatchers:

This class shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employes; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work.

2. Trick Train Dispatchers:

This class shall include positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.

3. Relief Train Dispatchers:
Extra Train Dispatchers:

This class shall include persons who are used to perform service defined in either or both classes included in above paragraphs 1 and 2.

(c) - Centralized Traffic Control:

Any employe dispatching trains over a circuit or circuits which control the movement of trains by the method commonly known as Centralized Traffic Control is a train dispatcher.

AGREEMENT BETWEEN THE
GRAND TRUNK WESTERN RAILROAD COMPANY
AND ITS EMPLOYEES REPRESENTED BY THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION

It is agreed:

Effective March 1, 1978, paragraphs (a) and (b) of Article 1 - Scope, Definitions, of the January 1, 1955 Working Agreement, are amended to read as follows:

"Article 1
Scope, Definitions

(a) - Scope

The term "train dispatcher" as used herein shall be understood to include assistant chief train dispatchers, assistant to chief train dispatchers, trick train dispatchers, relief train dispatchers and extra train dispatchers.

(b) - Definitions

1. Assistant Chief Train Dispatchers:

This class shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employes; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work.

2. Assistant to Chief Train Dispatchers:

This class shall include positions in which the duties of incumbents are to assist the Chief Dispatcher as required and to assist the Assistant Chief Dispatchers in the duties included in above paragraph 1.

3. Trick Train Dispatchers:

This class shall include positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.

4. Relief Train Dispatchers:
Extra Train Dispatchers:

This class shall include persons who are used to perform service defined in the classes included in above paragraphs 1, 2 and 3."

Accepted by:

General Chairman, A.T.D.A.

Accepted by:

Director, Labor Relations
Grand Trunk Western Railroad Co.

Approved by:

President A.T.D.A.

Date: July. 28, 1978

ARTICLE 2
Hours of Service, Overtime, Etc.

(a) - Hours of Service.

Eight (8) consecutive hours shall constitute a day's work.

(b) - Overtime.

Effective April 1, 1942 (as per Mediation Agreement dated March 14, 1942) time worked in excess of eight (8) hours on any day, exclusive of the time required to make transfer, will be considered overtime and shall be paid for at the rate of time and one-half on the minute basis.

(c) - The term "time required to make transfer" includes the time it is necessary for the train dispatcher who is being relieved, to turn over to the relieving train dispatcher the information necessary to permit the relieving train dispatcher to fully and completely begin dispatcher service on the trick to which he is assigned. A train dispatcher who is required to remain in charge during the time transfer is being made will not be considered as having accrued overtime. Except to extent provided herein with respect to transfer time, a train dispatcher required to remain on duty after the expiration of his tour of duty will be paid for such time as overtime.

(d) - Service Other Than Regular Assignment.

A regularly assigned train dispatcher who is required to fill an assignment, other than that obtained in the exercise of seniority, in excess of 15 days, shall be compensated at time and one-half rate applicable to the assignment filled, except that a train dispatcher who is required to fill the position of chief train dispatcher or assistant chief train dispatcher shall be compensated at the rate of that position.

(e) - Starting - Ending Time of Assignments.

No regular assignment shall be scheduled to start or terminate between the hours of 1:00 A.M. and 4:00 A.M.

ARTICLE 3
Rest Days

(a) - (1) Each regularly assigned train dispatcher will be entitled and required to take two (2) regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest possible extent. Carrier may assign non-consecutive rest days only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five (5) days per week.

(2) Regularly assigned train dispatchers who are required to perform service on the rest days assigned to their position will be paid at rate of time and one-half for service performed on either or both of such rest days.

(3) Extra train dispatchers who are required to work as train dispatchers in excess of five (5) consecutive days shall be paid one and one-half times the basic straight-time rate for work on either or both the sixth or seventh days but shall not have the right to claim work on such sixth or seventh days.

OFFICIAL COPY

Battle Creek, Mich

December 29th, 1954

Memorandum of Understanding

It is hereby mutually agreed to by and between the American Train Dispatchers Association and the Grand Trunk Western R.R., by the officers there of whose signatures are inscribed below that in applying Article 1 of the Agreement between the A.T.D.A. and the G.T.W. R.R., effective January 1st, 1955, the provisions thereof are locally interpreted to permit the bulletining of a Relief position which will include two rest days for the Chief Dispatcher, an excepted position, but relief for which it is anticipated shall be supplied from the Train Dispatchers group.

The bulletin advertising Relief position required under the January 1st, 1955 Agreement, a copy of which is attached and made a part of this local Memorandum of Understanding, illustrates the method that is to be followed in all future vacancies. The successful applicant for this and subsequent Relief position shall be subject to all rules of the Working Agreement between the Grand Trunk Western Railroad and its employees represented by the American Train Dispatchers Association, effective date January 1st, 1955.

For the Grand Trunk Western R.R.
Chicago Division

By --/s/ A. G. Thernstrom
Its Superintendent

For the American Train Dispatchers Assn.

By --/s/ G. R. Pilmore
Its Office Chairman

Dick O'Brien
Labor Relations

ATTACHMENT-1

[illegible]

During discussion of the Scope Rule, it was agreed to accept the Scope Rule appearing in the revised agreement, with the following appearing in the record of negotiations, but not in the Agreement:

"Art. I - Scope: Assistant Chief Dispatchers to be included and the Article to be patterned after CLC (Chem Dist) Rule I with some modification. Organization withdrew their proposal 1 (c) Combination of Services, on the basis of a Statement from Mr. W.W. Ryan that in event they abolish any of their Asst. Chief Dispatcher positions and combine the duties with those of a trick train dispatcher that the Assistant Chief Dispatcher rate will apply to the remaining position. Mr. Ryan also stated that Carrier anticipates that Chief Dispatchers will be allowed two rest days per week and when such positions are filled on rest days, they will be filled from the ranks of train dispatchers. Mr. Crawford stated that his Organization reserves the right, in agreeing to the Scope Rule, to serve a Section Six notice, under the Railway Labor Act, to have Chief Dispatchers placed under the Agreement, in the event Carrier changes its policy of allowing Chief Dispatchers two rest days per week. Mr. Ryan further stated that Carrier anticipates that when relief is provided Chief Dispatchers, on vacation, or other times when they are away from the office one day or more such relief will be taken from train dispatcher ranks."

(Note: Mr. Ryan assured us that they will relieve the Chief Dispatchers for 2 rest days etc. and that he used the word anticipates in order to protect the Chiefs' in their Supplemental Pension Privileges and not for any reason to evade his statement to us)

The above Memo to appear in the records of the Organization and Carrier alike so that no future misunderstanding [illegible] in this matter.

November 30, 1954.

See 12/29/54 memo. of understanding

MEMORANDUM OF AGREEMENT

It is agreed, pursuant with Article 3, paragraph (e), of the Train Dispatcher's Agreement, that the Train Dispatcher West positions or territories established in the Pontiac, Michigan Office effective April 18, 1983, by Bulletin No. 8 may be doubled with the Train Dispatcher East positions for weekly rest day relief purposes.

Signed this 5th day of May, 1983.

FOR THE
AMERICAN TRAIN DISPATCHERS
ASSOCIATION

L. DeYoung
General Chairman

FOR THE
GRAND TRUNK WESTERN RAILROAD
COMPANY

D. E. Prover
Director, Labor Relations

ARTICLE 3 - continued

(b) - The term "rest days" as used in Article 3(a) means not less than the number of hours as shown below shall elapse between the time required to report on the day preceding rest day or days and the time required to report following the rest day or days. The same definition shall not apply in cases of transfers account train dispatchers exercising seniority.

	Consecutive Rest Days	Non-Consecutive Rest Days *
Regularly assigned Train Dispatchers other than Relief Train Dispatchers	72 hours	48 hours
Relief Train Dispatchers	56 hours	32 hours
Extra Train Dispatchers	56 hours	32 hours

*As referred to in last sentence Article 3(a)(1).

(c) The company will designate established rest days for each regular position which may be changed to meet service requirements by giving not less than thirty-six (36) hours written notice to the employe affected.

(d) When relief service of less than five days per week is performed by extra train dispatchers they will be paid the rate of each train dispatcher relieved.

(e) The doubling of territory or positions for relief purposes will not be permitted, except as may be agreed by an officer of the Company and General Chairman. This shall not require a change in assignment of any existing positions.

ARTICLE 4
Seniority

also see Index I

(a) - (1) As of June 1, 1954 each operating Division (Chicago Division and Detroit Division) will constitute a separate seniority district.

(2) Concurrently with the establishing of the two separate seniority districts as outlined in paragraph (a)(1), employes holding train dispatcher seniority will be placed on the seniority roster of the Division where last working as train dispatcher. It is further understood that a train dispatcher holding a permanent regular assignment as such as of the effective date outlined in (a)(1), will have the additional right, in the event he subsequently has insufficient seniority to retain a regular assignment on the seniority district to which assigned, to revert to the extra list, on that district, or to displace a junior regularly assigned train dispatcher on the other seniority district having a later seniority date as train dispatcher; an employe so transferring will carry his seniority date with him, however, he must return to his assigned seniority district at the first opportunity of holding a permanent assignment in such district. Train dispatchers exercising their seniority on territory which they have not dispatched previously will be required to qualify on the work and territory on their own time.

(3) Seniority as train dispatcher which has been established prior to June 1, 1954 shall not be changed. Employes entering train dispatching service on or after June 1, 1954, shall not acquire a seniority date as train dispatcher until after they have performed an aggregate of thirty (30) compensated days dispatching service, but then if accepted their seniority will begin as of the first day such compensated service was performed.

(b) - Forfeiture of Seniority.

(1) Failure to perform service as train dispatcher during a period of ninety (90) consecutive days shall result in forfeiture of seniority, except when such non-performance is due to lack of work, physical disability, or as otherwise provided in this agreement.

(2) A train dispatcher who voluntarily relinquishes his assignment to enter other service (except as provided in Article 4(c) hereof or in case of physical disability) shall forfeit his seniority as train dispatcher.

(3) An extra train dispatcher who declines to perform train dispatcher service available to him under these rules in order to engage in other service or bid on all positions bulletined in his seniority district shall forfeit his seniority as train dispatcher.

(c) - Official and Excepted Positions.

(1) A train dispatcher who is now filling, or who may hereafter accept an official position with the Railroad or with the American Train Dispatchers Association will retain and accumulate seniority during the occupancy of such position.

(2) If deprived of such position, or if his position is abolished, or when he no longer retains his office in the American Train Dispatchers Association, he may, within thirty (30) days, unless prevented by physical disability, exercise his seniority as provided in Item (1) Section (d) of this Article.

(3) Failure to return to service covered by this agreement within the time limit specified herein shall result in forfeiture of seniority as train dispatcher.

(d) - Exercise of Seniority.

(1) Displacement rights over junior employes may be exercised:

(a) When forces are reduced or positions are abolished.

(b) When displaced by a senior train dispatcher.

(c) By the train dispatcher affected, when his assigned weekly rest days are changed.

(d) When there is a change in assigned territory.

(e) When returning from a position covered by Article 4(c), or in accordance with Article 6(a).

(2) Except as provided in Article 4(c), a train dispatcher desiring to exercise seniority rights under the provisions of this Article 4(d) shall do so in writing within six (6) days.

(3) A regularly assigned dispatcher's seniority rights are not impaired by his failure to bid on positions bulletined.

(e) - Seniority Rosters.

(1) Seniority rosters for each seniority district, showing names and seniority dates of all those entitled to hold seniority as train dispatcher under these rules shall be revised and reissued in January of each year.

(2) Rosters shall be kept on file in the respective dispatching offices, open to the inspection of all concerned, and shall be subject to correction upon proof of error or omission only if protest in writing is made within thirty (30) days from date of first posting upon which such entry or omission occurs. Copies of all rosters and protests shall be furnished to the General Chairman.

ARTICLE 5

Vacancies, Reduction, Change in Starting Time, New Offices

(a) - Filling Vacancies.

In filling vacancies or new positions covered by this agreement, ability being sufficient, seniority shall govern.

(b) - Permanent Vacancies and New Positions.

(1) Permanent vacancies and new positions will be advertised promptly to train dispatchers holding seniority on the seniority district.

(2) When practicable bulletin advertising such vacancies and positions shall be posted sufficiently in advance to permit assignment being made at time vacancy occurs or new position is created.

(3) Applications must be in writing and filed within five (5) days from date of bulletin and the position awarded the successful applicant within five (5) days following close of bulletin period, except that if application is filed by the senior train dispatcher on the district, the bulletin may be closed immediately and the position awarded to such applicant.

(4) Except in case of unavoidable emergency, the successful applicant shall be permitted to begin service on the position within five (5) days after the award is made or at the beginning of the assignment if later than five (5) days after the award is made.

(c) - Temporary Vacancies.

When filling a temporary train dispatcher vacancy resulting from sickness, vacation, or leave of absence, known to be more than four days' and less than six months' duration, it will not be bulletined but will be given to the senior qualified applicant holding a regular position, but after six months such temporary vacancy will be bulletined as provided in Section (b) of this Article. Applicant for the temporary vacancy will remain on the temporary vacancy for its duration or until displaced by a senior man, or while on such vacancy bids in a permanent position he may elect to be placed on the new position or remain on temporary vacancy for its duration, after which he will go to his regular assignment or to another temporary vacancy to which entitled. If displaced from regular assignment while occupying temporary vacancy he must exercise displacement rights in accordance with Article 4(d). He will not, however, be permitted to return to his own position or to another temporary vacancy on either of the two rest days of the temporary vacancy which he is working, except that if he lost one day getting on the temporary

AGREEMENT
BETWEEN THE
GRAND TRUNK WESTERN RAILROAD COMPANY
AND THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION

Paragraph 1.(d) of the so-called "Pick-Board" agreement effective January 23, 1987 is cancelled and the following substituted therefor:

> Commencing in 1991 and thereafter, at the request of the General Chairman, the Pick-Board will be circulated during the seven-day calendar period preceding the third Sunday in January, the assignment selections to become effective on the third Sunday in January.

Accepted For The
AMERICAN TRAIN DISPATCHERS
ASSOCIATION

L. DeYoung - General Chairman

Accepted For The
GRAND TRUNK WESTERN
RAILROAD COMPANY

R. J. O'Brien, Assistant
Director Labor Relations

Detroit, Michigan
December 7, 1990

AGREEMENT
BETWEEN THE
GRAND TRUNK WESTERN RAILROAD COMPANY
AND THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION

IT IS AGREED:

1. There is hereby established a so-called "Pick-Board" for the Pontiac Train Dispatching Office, which shall be applied as follows:

   (a) All regularly assigned train dispatcher positions, including A.U.D. positions, in the Pontiac Train Dispatching Office will be listed on a sheet designated as a "Pick-Board".

   (b) This Pick-Board listing will be circulated, in seniority order, among all the employees holding regular train dispatcher positions, including A.U.D. positions, in the Pontiac Train Dispatching Office, and the employees will designate thereon the position of their choice.

   (c) The Pick-Board listing, following its completion, will be posted in the Pontiac Train Dispatching Office and the assignment selections of the Pick-Board will become effective on the first Sunday following completion of the Pick-Board.

   (d) The initial Pick-Board will be circulated among the employees during the period of January 26, 1987 through January 29, 1987, and the assignment selections to be effective on Sunday, February 1, 1987. Commencing in 1988 and thereafter, at the request of the General Chairman, the Pick-Board will be circulated during the seven day calendar period preceding the first Sunday in April, the assignment selections to become effective on the first Sunday in April.

   (e) In the event any employee holding a regular train dispatcher position, including A.U.D. positions, is absent on vacation or leave of absence during a period when the Pick-Board is circulated, such employee on return to service will be allowed to make a seniority displacement.

2. This Agreement will in no way supersede or abrogate the provisions of Article 5 of the current Working Agreement covering the filling of vacancies or new positions, and any rules or understandings in conflict with this Agreement are amended to the extent necessary to comply herewith.

3. This Agreement shall become effective on January 23, 1987.

ACCEPTED BY:

General Chairman

Date: January 23, 1987

ACCEPTED BY:

E. M. Bouchard

Director, Labor Relations

Train Dispatchers November 7, 1992

To clarify our existing practice covering Temporary Vacancies.

Those persons bidding in a Temporary Vacancy will remain on said vacancy for the duration of the advertised dates.

Should the vacancy extend past the advertised dates, then the incumbent on the vacancy may elect to remain on said vacancy or return to their regular position.

Should they opt to return to their regular job, then the subsequent vacancy provided it is longer than five days may be advertised for a temporary vacancy.

J R Hurd
Chief Dispatcher

N J Schmidt
General Chairman

vacancy by reason of the Hours of Service Law, he may return to his own position or to another temporary vacancy on the second rest day of such temporary vacancy which he is working. In event no qualified regular assigned train dispatcher applies for the temporary vacancy, Article 5(d) will govern. Temporary vacancies of less than five days' duration will be filled by extra dispatchers as provided in Article 5(d). Time lost in making changes under the provisions of this section will not be paid for.

NOTE: In the application of this Article 5(c) it is understood that this arrangement will not cause the carrier to assume any additional expense over and above that which would have been incurred had the vacancy not taken place.

(d) - Extra Work. See index "H"

(1) Temporary vacancies not claimed by regular assigned train dispatcher under paragraph (c), and temporary trick dispatcher vacancies of four days or less duration, will be filled by available qualified extra train dispatchers who will be paid the daily rate of the position on which they perform service; Assistant chief dispatcher vacancies of less than four days may be filled by either a qualified extra train dispatcher or regular assigned train dispatcher.

(2) Until an extra train dispatcher has acquired a seniority date as provided in Article 4(a)(3) his seniority as an extra train dispatcher for the purpose of next Article 5(d)(3) shall be determined by the date of first performance of compensated service as a train dispatcher.

(3) The senior extra dispatcher who is qualified, shall be called and used for extra train dispatcher service whenever he is available, without regard to loss of time in changing shifts. The senior extra dispatcher will be considered available if he can fill the vacancy without violating the Hours of Service Law, and is so situated that he can get to the point where the train dispatchers' office is located in time to begin work at the starting time of the vacant shift.

(4) When extra train dispatchers are called from their assignments in other service to perform train dispatcher service, they will be paid the rate of the position they fill in dispatcher service, but if the change from one service to the other requires them to lose time on account of the Hours of Service Law, their compensation for time lost shall not be less than it would have been had they continued on their assignment in other service.

(e) - Reduction in Force.

(1) When force is reduced or positions are abolished the senior train dispatcher will be retained.

(2) Not less than seventy-two (72) hours advance notice of the abolishment of a regular position shall be posted in the train dispatcher's office to employes affected and copy of such notice sent to the General Chairman. EXCEPTION: Not more than sixteen (16) hours' advance notice required under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employes involved in the force reductions no longer exists or cannot be performed.

AGREEMENT
BETWEEN THE
GRAND TRUNK WESTERN RAILROAD COMPANY
REPRESENTED BY THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION

Whereas, the established calling procedure for the filling of temporary vacancies in the Train Dispatchers office allows for the diversion of a regularly assigned Train Dispatcher off his position, obtained in the exercise of seniority, when needed to prevent a Federal Hours of Service violation, or fill a position that there are no rested qualified Dispatchers.

Whereas, it is desirous of the Carrier and the Organization to promote harmony and quality in the work place.

Whereas, the parties desire to alter the established calling procedure.

It is agreed:

1. When necessary to prevent a Federal Hours of Service violation or fill a position to which there are no rested qualified Dispatchers, the senior qualified Train Dispatcher on that shift in question will be offered the diversion, then the second senior person would be asked. This would continue until such time that the junior person is next in line for the diversion. Should the calling procedure reach the junior employee, then that employee would be required to accept the diversion.

2. The Dispatcher who is diverted will be compensated at the punitive rate for the position which he is diverted to.

3. This agreement shall become effective immediately and may be abrogated by either party giving the other sixty (60) days written notification.

FOR THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

N. J. Schmidt
General Chairman

Date: 7/30/92

FOR THE GRAND TRUNK WESTERN RAILROAD COMPANY

J. R. Hurd
Chief Dispatcher

Date: 8/3/92

The following is a step by step procedure for the filling of vacancies in the Train Dispatchers Office.

1. AUD's are placed on the AUD board at 0001 following the rest days of their position and are called on a first out, first in basis.

2. Rested qualified AUD in order of their placement on the AUD board.

3. Rested Extra man.

4. Qualified Dispatchers called in seniority order off in observance of their rest days.

5. Qualified Dispatchers on rest days who would not be rested for their own position.

6. Doubling on Non-Hours of service positions, called in seniority order without violating the Hours of Service Law.

7. Divert qualified Dispatcher in seniority order per agreement dated July 30, 1992.

8. Call next person to protect position person was diverted from in calling procedure order. However, the person(s) who refused the original vacancy would be called after all others have been asked in the calling procedure.

9. Call Dispatchers on rest days following vacation.

10. Split shifts on trick positions.

11. Double shifts on trick positions.

(f) - Change in Starting Time of Assignment.

Not less than seventy-two (72) hours advance notice of change of more than one (1) hour in the starting time of a permanent assignment shall be posted in the train dispatcher's office to employes affected and copy of such notice sent to the General Chairman.

(g) - New Offices, Relocations, Consolidations.

(1) When conditions are created by management which may make it necessary for train dispatchers to move from one point to another in the exercise of seniority, not less than 30 days advance notice, in writing, shall be given the General Chairman and train dispatchers affected.

(2) When a new office is established, an office relocated to another point or when positions are transferred from one office to another, new positions will be considered as having been established in such office and bulletined in accordance with Section (b) of this Article 5. Train dispatchers affected, who are not assigned to new positions, may exercise seniority in accordance with the provisions of Article 4(d).

(3) Train dispatchers who move from one point to another in exercising seniority as a result of conditions created under this rule, shall be compensated for time lost at rate of last train dispatcher position filled. They shall also be reimbursed for actual moving expense of household effects.

ARTICLE 6
Leave of Absence and Vacations

(a) - Leave of Absence.

(1) A regularly assigned train dispatcher may be granted a leave of absence up to ninety (90) days in any consecutive twelve (12) months period without loss of seniority. Leave of absence for regularly assigned train dispatchers in excess of ninety (90) days or leaves of absence to extra train dispatchers may be granted by agreement in writing between the management and the General Chairman, Written leave of absence is not required in case of bona fide illness.

(2) A train dispatcher who, while on leave of absence or absent because of physical disability, engages in other employment without mutual agreement thereto, between the management and the General Chairman, shall forfeit his seniority.

(3) A regularly assigned train dispatcher returning from leave of absence or from physical disability may return to his former position if it has not been abolished or has not been permanently filled by a senior train dispatcher, or he may, within six days following his return, exercise seniority rights to any position advertised during his absence. If his former position has been abolished or has been permanently filled by a senior train dispatcher in the exercise of seniority, he may exercise seniority rights in accordance with Article 4(d). Having obtained a regular assignment, he may then displace any train dispatcher his junior on the seniority district then filling a temporary vacancy obtained under Article 5(c). An extra train dispatcher returning from leave of absence or physical disability may displace any train dispatcher his junior on seniority district who has obtained a regular assignment during his absence, or he may return to the train dispatchers extra list. A train dispatcher who fails to report for duty at the expiration of leave of absence shall forfeit his seniority unless the leave may be

extended by agreement between the management and the General Chairman.

(4) Train dispatchers serving on committees of the American Train Dispatchers Association will be relieved without unnecessary delay and will be furnished free transportation compatible with existing regulations.

(b) - Vacations - As amended by Article III - of Agreement, September 22, 1960.

The vacation rule as set forth in Article III of the Agreement of June 10, 1954 (and Memorandum of the same date attached thereto) is hereby amended to read as follows:

Section 1(a)

Effective with the calendar year 1961, an annual vacation of two weeks (10 working days) with pay will be granted to each dispatcher, covered by the scope of each respective agreement, who rendered compensated dispatcher's service on not less than one hundred twenty (120) days during the preceding calendar year, under the conditions set forth in Section 2.

Section 1(b)

Effective with the calendar year 1961, an annual vacation of three weeks (15 working days) with pay, under the conditions set forth in Section 2, will be granted to each dispatcher covered by the scope of each respective agreement who rendered compensated dispatcher's service on not less than one hundred (100) days during the preceding calendar year and who has fifteen or more years of continuous service with the employing carrier and who during such period of continuous service has rendered compensated service on not less than 100 days (160 days in each of such years prior to 1949, and 133 days in the years 1949-1959 inclusive) in each of fifteen of such years, not necessarily consecutive.

(Note to Section 1(a) and 1(b): A shift which extends from one calendar day into another shall be counted as one day in computing the days referred to above.)

Section 1(c)

Effective January 1, 1961, calendar days in each current qualifying year on which a dispatcher renders no service as such because of his own sickness or because of his own injury shall be included in computing days of compensated service and years of continuous service for vacation qualification purposes on the basis of a maximum of 15 such days for a dispatcher with less than fifteen years of continuous service with the employing carrier and a maximum of 30 such days for a dispatcher with fifteen or more years of continuous service with the employing carrier, provided that such dispatcher was regularly assigned to a bulletined dispatcher's position at the time his absence commenced and returned as a regularly assigned dispatcher to a bulletined dispatcher's position at the termination of such absence, and provided further that no calendar day on which a dispatcher was credited with any compensation under sick leave rules or practices shall be included under this Section 1(c).

Section 1(d)

Effective January 1, 1961, in instances where dispatchers have performed seven (7) months' service as such with the employing carrier, or have performed, in a calendar year, service sufficient to qualify them for a vacation under Section 1(a) in the following calendar year, and subsequently become members of the Armed Forces of the United States, the time spent by such dispatchers in the Armed Forces will be credited as qualifying service in determining the length of vacations for which they may qualify under Section 1(b) upon their return to service as dispatchers with the employing carrier.

Section 2(a)

(1) - When vacations are afforded

(i) - A dispatcher having a regular assignment will be paid while on vacation the compensation of such assignment.

(ii) - A dispatcher not having a regular assignment will be paid while on vacation on basis of the average straight-time compensation earned as a dispatcher in the last payroll period preceding the vacation during which he performed service.

(2) - When vacations are not afforded

If a vacation is not afforded, payment in lieu thereof will be made not later than the first payroll period in January of the following year, computed on the following basis:

(i) - A dispatcher having a regular assignment will be paid in lieu of vacation the compensation of such assignment.

(ii) - A dispatcher not having a regular assignment will be paid in lieu of vacation on basis of the average straight-time compensation earned as a dispatcher in the last payroll period during which he performed service preceding the close of the vacation year.

(Note to Section 2(a): The words "a dispatcher not having a regular assignment" as used in this Section mean and refer to an employe who holds seniority as a dispatcher and is subject to call as such at the time his vacation is taken or at the time he is paid in lieu thereof.)

Section 2(b)

Vacations, or allowances therefor, under two or more schedules held by different organizations on the same carrier shall not be combined to create a vacation of more than the maximum number of days provided for in either of such schedules.

Section 2(c)

Effective with the date of this agreement the vacation provided for in this agreement shall be considered to have been earned when the dispatcher has qualified under Section 1 hereof. If a dispatcher's employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge, non-compliance with a union-shop agreement, or failure to return after furlough he shall at the time of such termination be granted full vacation pay earned up to the time he leaves the service including pay for vacation earned in the preceding year or years and not yet granted, and the vacation for the succeeding year if the dispatcher has qualified therefor under Section 1. If a dispatcher thus entitled to vacation or vacation pay shall die the vacation pay earned and not received shall be paid to such beneficiary as may have been designated, or in the absence of such designation, the surviving spouse or children or his estate, in that order of preference.

Section 2(d)

Vacations shall not be accumulated or carried over from one vacation year to another.

Section 2(e)

The terms of this Article shall not be construed to deprive any employee of such additional vacation days as he may be entitled to receive under any existing rule of a dispatcher's agreement, understanding or custom, which additional vacation days shall be accorded under and in accordance with the terms of such existing rule, understanding or custom.

ARTICLE 7
Rates of Pay

(a) Trick train dispatchers shall be paid at the rate of $645.34 and Assistant Chief Train Dispatchers shall be paid at the rate of $695.96 which are the basic monthly rates for a month of 174 hours. Future wage adjustments, so long as such rates remain in effect on such basis, shall be on the basis of 200 hours per month. (Rates shown became effective May 1, 1962.)

(b) To determine the straight-time hourly rate divide the monthly rate by 174. To determine the daily rate, multiply the monthly rate by 12 and divide the result by 261.

(c) Loss of time on account of Hours of Service Law in changing positions by direction of proper authority, shall be paid for at the rate of the position for which service was performed immediately prior to such change.

(d) Rates of pay for additional dispatching positions that may be created will be the same as for positions of a similar nature already in existence.

ARTICLE 8
Attending Court, Investigations, Etc., and Away From Headquarters

(a) Train dispatchers required by the company to attend Court or Inquest, or required to attend Investigations or Hearings when no offense committed, shall be paid the earnings of their assignment for all time lost while required to be in attendance plus straight time on a minute basis for actual deadheading time outside of assigned hours and necessary actual expenses. Fees or mileage accruing will be assigned to the company.

(b) Train Dispatchers will be assigned to established headquarters and when away from such headquarters in company's service shall be allowed necessary actual expenses in addition to regular salary.

ARTICLE 9
Discipline, Etc.

(a) A train dispatcher shall not be disciplined or dismissed without proper investigation as provided herein. Suspension pending such investigation shall not be deemed a violation of this principle. The investigation shall be fair and impartial. Such investigation shall be held within ten days from the date of notice to the train dispatcher involved notifying him of the charge or charges. Such notice shall be in writing and shall clearly specify the charge. The train dispatcher shall have the right to be represented by a fellow train dispatcher employe of his choice or a duly accredited representative of the organization and he shall be given reasonable opportunity to secure the presence of necessary witnesses. The train dispatcher's representative shall be permitted to hear all evidence introduced into the record and shall have the right to examine all witnesses. Decision shall be rendered as promptly as possible but not later than thirty (30) days from the date of close of the investigation. A copy of the transcript of the investigation shall be furnished the train dispatcher or his representatives upon request.

(b) If the decision is not satisfactory to the train dispatcher, the case may be appealed in succession up to the highest officer of the railway company designated to handle such cases, provided written notice of appeal is given the official appealed to and the official rendering the decision appealed from within thirty days from the date of the decision. Decisions on appeals will be rendered within sixty days from date of appeal unless it is mutually agreed in writing to extend the time in any particular case.

(c) If the decision on the investigation or on appeal be in favor of the train dispatcher, his record shall be cleared of the charge, and if suspended or dismissed he shall be returned to former position and compensated for any wage loss suffered by him, less any earnings during the time held out of service. If former position abolished or filled by a senior employe the returning dispatcher may exercise displacement rights over junior employes. In all other cases of reinstatement after dismissal there shall be agreement between the parties hereto as to the manner in which the train dispatcher will be permitted to exercise displacement rights.

(d) The reference to "duly accredited representative" as used in this agreement shall be interpreted to mean the officers or committee of the American Train Dispatchers Association.

ARTICLE 10
General

(a) - Privacy of Office.

Dispatching offices shall be maintained as private as possible and located so as to minimize interruptions or interference from outside noises.

(b) - Health and Safety.

The health and safety of train dispatchers while on duty shall be reasonably protected.

(c) - Teaching Students.

Train dispatchers shall not be compelled to instruct (break-in) students as train dispatcher.

[illegible] 9/29/86

ARTICLE 11
Effective Date and Change

This Agreement shall become effective January 1, 1955 and supersedes previous Agreements and Understandings in conflict therewith and shall continue in effect until changed in accordance with the Railway Labor Act, as amended.

Signed at Detroit, Michigan, this 3rd day of December, 1954.

For Train Dispatchers represented by The American Train Dispatchers Association:

/s/ Geo. W. Kay
General Chairman

For: Grand Trunk Western Railroad Co.

/s/ S. J. Massey, Jr.
Vice President & General Manager

APPROVED:

/s/ R. M. Crawford
Vice President - A. T. D. A.

Carrier's Compilation

Agreement effective January 1, 1955 as revised by subsequent agreements up to and including Agreement dated July 10, 1962.

Carrier's Files: 7-12
7-48

AGREEMENT
BETWEEN THE
GRAND TRUNK WESTERN RAILROAD COMPANY
AND THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION

IT IS AGREED:

1. Effective October 5, 1986, the Memorandum of Agreement dated April 17, 1984, relative to pay for training student Train Dispatchers, is abrogated.

2. Effective October 5, 1986, Train Dispatchers who are assigned to train student Train Dispatchers or who are required to break-in extra or regular Train Dispatchers on positions will be allowed a payment of forty-five (45) minutes per tour of duty, at the pro-rata rate of their regular position.

3. Effective October 5, 1986, the daily rate of pay for student Train Dispatchers shall be eighty (80) per cent of the straight time daily rate of a trick Train Dispatcher position.

ACCEPTED BY:

General Chairman - A.T.D.A.

ACCEPTED BY:

E. M. Bouchard
Director, Labor Relations

APPROVED BY:

Vice President - A.T.D.A.

Date: Sept 29, 1986

June 21, 1967
File: 8390-4(18)

GRAND TRUNK WESTERN RAILROAD CO.
JUN 26 1967
Labor Relations Office
DETROIT, MICH.

Grand Trunk Western Railroad Co.
J. W. Demcoe
Vice President and General Manager
131 West Lafayette Boulevard
Detroit, Michigan 48226

Mr. L. C. O'Connor, General Chairman
American Train Dispatchers Association
423 West Main Street
Durand, Michigan 48429

Dear Sir:

This refers to our exchange of correspondence in connection with the subject of rest day compensation for Train Dispatchers.

The following offer is being made without prejudice to carrier's position that under existing rules, agreements and past practice on this railroad, train dispatchers and Asst. Chief Dispatchers are properly being compensated at the time and one-half hourly rate of pay for rest day service.

In view of the manner in which employees represented by the American Train Dispatchers Association are being compensated for rest day service on other railroads, and subject to the conditions set forth in the following paragraph, I would be agreeable, commencing July 1, 1967, to computing the time and one-half rate referred to in Article 2(b) - Overtime, and Article 3(a)(2) - Rest Days, of the Working Agreement in effect between this carrier and its employees represented by the American Train Dispatchers Association, on the daily rate of pay.

The foregoing proposal is being made with the understanding that claims of record, or claims not as yet filed for dates prior to July 1, 1967, will be withdrawn or withheld, as the case may be.

If the foregoing proposals meet with your approval, then kindly sign the copies of this letter, which is being furnished you in quadruplicate, in the space provided below, and return to the undersigned.

Accepted for the American Train
Dispatchers Association

L. C. O'Connor

General Chairman

Yours very truly

J. W. Demcoe

cc-Mr. R. C. Coutts, President
American Train Dispatchers Association
10 East Huron Street
Chicago, Illinois 60611

ATTACHMENT "B"

AGREEMENT BETWEEN THE GRAND TRUNK WESTERN RAILROAD COMPANY AND THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

IT IS AGREED:

SICK BENEFITS

1. Subject to the conditions enumerated, effective January 1, 1976, an employee who has been in continuous service of the company for the period of time as specified, will be granted an allowance not in excess of a day's pay at his established rate for time absent on account of a bona fide sickness:

(a) Upon completion of one calendar year of service a total in the following year of service of five (5) working days sick leave.

(b) Upon completion of two calendar years of service a total in the following year of service of eight (8) working days sick leave.

(c) Upon completion of three calendar years of service a total in each year of service thereafter of twelve (12) working days sick leave.

NOTE "A" An employee who commences service for the company after January 1 of any year will be given credit for one calendar year of service under this rule providing such employee renders compensated service on not less than 120 days in such year.

NOTE "B" Where employees are regularly required to work their eight hour assignments on their rest days and/or holidays, when they are absent due to bona fide sickness on such days, the designated holidays and assigned rest

days will be considered as working days for the purpose of applying this rule; however, the absent employee will be allowed only straight time rate for such days, except as provided in Section 7.

NOTE "C" A minimum of 100 days compensated service must be rendered by an employee, under this agreement, in any current calendar year in order to qualify for sick benefits under paragraphs (a), (b) and (c) hereof for the succeeding calendar year, with the exception that an employee who does not qualify for sick benefits under this provision, may draw from his Sick Leave Reserve, if any.

2. At the end of each calendar year, regularly assigned employees having unused sick leave will have the following options:

(a) Put all the unused sick leave into a Sick Leave Reserve which can be drawn upon at a later date or left in the Sick Leave Reserve until time of retirement from the service of the Grand Trunk under the provisions of the U.S. Railroad Retirement Act. At time of retirement the employee will be given a cash payment equal to 50% of the unused sick leave in the Sick Leave Reserve. The straight time rate of pay of the regularly assigned position held at time of retirement will be used in calculating the amount due under this paragraph. EXAMPLE: The employee's regular assigned position at time of retirement has a straight time daily rate of pay of $40.00 and he has 80 days in his Sick Leave Reserve. Such employee would receive a payment of $1600.00 (50% of 80 days = 40 days x $40.00 = $1600.00).

(b) Apply for cash payment equal to 25% of the unused sick leave from the previous year. The straight time daily rate of pay of the regularly assigned position held at the end of the previous year will be used in calculating the amount due under this paragraph. EXAMPLE: The employee's regular assigned position at the end of the previous year had a straight time daily rate of pay of $44.00 and he has 8 unused sick leave days. Such employee would receive a payment of $88.00 (25% of 8 days = 2 days x $44.00 = $88.00)

(c) A combination of paragraphs (a) and (b), i.e., put a portion of the unused sick leave into the Sick Leave Reserve and apply for a cash payment of 25% of the remainder. EXAMPLE: The employee's regular assigned position at the end of the previous year had a straight time daily rate of $48.00 and he had 6 unused sick leave days. The employee choses to put 2 days into the Sick Leave Reserve and take 25% cash payment on the remaining days. Such employee would receive a payment of $48.00 (25% of 4 days = 1 day x $48.00) and would have 2 days in the Sick Leave Reserve to his credit.

3. An employee who is off account of bona fide sickness in any calendar year in excess of the specified allowance he is entitled to under Section 1 of this Rule shall be given additional sick leave with pay to the extent of his unused sick leave in his Sick Leave Reserve. Sick leave entitlement for the current year must be used up before any sick leave in the Sick Leave Reserve can be used.

4. (a) By the end of the first week in January of each year, employees with unused sick leave will be furnished with a form listing the options set forth in Section 2 of this rule. This completed form must be returned to the carrier by January 15, except where extenuating circumstances would preclude such action by the employee. In the event an employee fails to return a completed form by January 15, the entire amount of unused sick leave will be placed in the employee's Sick Leave Reserve.

(b) When the employee elects to receive payment in lieu of placing unused sick leave in his Sick Leave Reserve, the amount due shall be paid to the employee by February 28, unless otherwise agreed to between the Carrier and the General Chairman.

5. The employing officer must be satisfied that the sickness is bona fide. Satisfactory evidence as to sickness, preferably in the form of a certificate from a reputable physician, may be required in case of doubt.

6. Sick Leave Benefits, or allowances therefor, under two or more Agreements held by different Organizations on this Carrier shall not be combined to create benefits or allowances more than the maximum provided for in any of such Agreements.

7. No allowance will be made under this rule for any day on which the employee is entitled to compensation under any other rule of the Working Agreement.

8. Any sick leave allowance to be paid by the Company under this rule shall be reduced in amount by the maximum daily allowance which the employee will be paid, or could be paid, if proper claim were made by said employee under the Railroad Unemployment Insurance Act. In computing such supplemental allowance, only the period during which the employee is accorded sick leave allowance as provided in this rule will be considered.

9. An employee who leaves the service of the Company for any reason other than to retire under the U.S. Railroad Retirement Act will not be entitled to any pay for unused sick leave.

10. This Agreement shall be designated as Article 10(d) of the current Train Dispatchers' Working Agreement.

11. This Agreement shall become effective on January 1, 1976.

FOR THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

L. Dufourg
General Chairman

FOR THE GRAND TRUNK WESTERN RAILROAD COMPANY

D. E. Prover
Director, Labor Relations

APPROVED BY:

C. R. Pfenning - Pres - AT&DA

DATE: Feb. 23, 1976

A. Work Week of Assigned Utility Dispatchers

The first sentence of Paragraph 1.(c) reading "Work Week for Assigned Utility Dispatchers will be Monday through Sunday" of the agreement dated March 30, 1978 (eff April 1, 1978) covering Assigned Utility Dispatchers is deleted and the following substituted therefor:

Action Contd 5/21/91

> "Work Week" for Assigned Utility Dispatchers will be five consecutive days per week with two rest days as determined by supervision. AUD positions will be bulletined when changes are made.

B. Special Sick Leave Reserve

(1) Paragraph 2(f) of the special sick leave reserve agreement dated July 11, 1986 is amended to provide that train dispatchers are credited with 60 days in the special sick leave reserve upon attaining 30 months seniority as train dispatcher.

ARTICLE III - 401 (k) PLAN

The Carrier will establish by September 1, 1991, an Employee Savings Plan designed and intended to operate in conformity with Section 401 (k) of the Internal Revenue Code, as amended. The provision of the Plan will conform to the principles contained in Attachment A to this document. Except for changes in the Plan mandated by subsequent change in the Internal Revenue Code, no additions or changes may be made in Attachment A except by mutual agreement of the parties. The parties to this Agreement will not serve nor progress, prior to the attrition of all protected employees, any notice or proposal for changing the specific provision of Attachment A hereto.

ARTICLE IV - HEALTH AND WELFARE

The parties will adopt the provisions of the national settlement on Health and Welfare issues.

The parties agree to adopt employee cost sharing provisions included in the national settlement to the extent that employee contributions shall equal but not exceed the year to year cost sharing provisions agreed to in the national agreement through 1994. Employee cost sharing will equal the dollar amount contributed under the

AUD

* see content 5/21/91

AGREEMENT
BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

- - - - - - - - - - - - - - - -

1. (a) Effective April 1, 1978, the Carrier may establish positions in the Battle Creek and Pontiac Train Dispatcher's Office known as Assigned Utility Dispatchers.

(b) The position of Assigned Utility Dispatchers when established, will be bulletined to those entitled to bid for same under the applicable provisions of the ATDA Schedule Agreement, except as to assigned hours, rest days, dispatching territory and rate of pay. Compensation will be at the rate of position worked.

(c) "Work Week" for Assigned Utility Dispatchers will be Monday through Sunday. After an AUD completes five (5) starts in a work week, he will be subject to Agreement dated November 6, 1975, Carrier's File: 7-27. Assigned Utility Dispatchers who have booked off of their own accord will be considered off for a minimum of twenty-four (24) hours from the time of their booking off and will not be called during such period of time, except when no other qualified employee is available for a vacancy.

2. Incumbents of Assigned Utility Dispatcher positions who are available their entire work week will be guaranteed not less than five (5) times the straight time Trick Train Dispatcher's rate for such work week. All compensation paid by the Carrier to such employees, including overtime pay, vacation pay, arbitraries, penalty payments, payments made pursuant to paragraph 4, for all days included in a work week will be credited towards the guarantee.

3. (a) Incumbents of Assigned Utility Dispatcher's positions, who do not have their five (5) starts in, will be used before senior extra train dispatchers when filling vacancies.

(b) Assigned Utility Dispatchers will work during each work week on any and all vacancies and/or assignments; but shall have the rights to bid and be assigned to vacancies in accordance with their seniority. A position of AUD that has been, vacant for a period of six (6) months, will be bulletined as a permanent vacancy.

(c) Incumbents of Assigned Utility Dispatcher position will not be used in filling vacancies in another craft.

(d) In offices having two or more positions of Assigned Utility Dispatchers, AUD's will be called on a first-in, first-out basis. AUD's names will be placed on the AUD's availability call list at the beginning of each work week in the same order they complete their five (5) starts in the previous week.

4. Assigned Utility Dispatchers may be used for learning the road, breaking in, training, or assisting Chief Dispatcher in emergency. Such days shall be considered the same as a day on which train dispatching service is performed, i.e., they will be considered as starts. They will be paid Trick Train Dispatcher's rate for such days and such compensation shall count towards the guarantee.

5. Assigned Utility Dispatcher will be given as near as possible a two hour call in advance of the starting time of the position for which required.

This Agreement shall become effective April 1, 1978, and shall terminate at 12 Midnight September 30, 1978, unless continued in effect by mutual agreement of both parties.

ACCEPTED BY THE AMERICAN TRAIN DISPATCHERS ASSOCIATION:

Leonard DeJonny
General Chairman

March 30, 1978
Date

ACCEPTED FOR THE GRAND TRUNK WESTERN RAILROAD COMPANY:

[signature]
Director, Labor Relations

APPROVED BY:

B. C. Hilber RH

March 30, 1978
DATE

Grand Trunk Western Railroad Co
131 West Lafayette Boulevard
Detroit, Michigan 48226

September 29, 1978

Our File: 7-31

Mr. L. DeYoung, General Chairman
American Train Dispatchers Association
6883 Big Trail
Holly, Michigan 48442

Dear Sir:

This has reference to our Agreement dated March 30, 1978, establishing Assigned Utility Dispatchers in the Train Dispatchers' Offices at Battle Creek and Pontiac, Michigan, effective April 1, 1978.

The last paragraph of the March 30, 1978 Agreement reads as follows:

> "This Agreement shall become effective April 1, 1978, and shall terminate at 12 midnight September 30, 1978, unless continued in effect by mutual agreement of both parties."

In telephone conversation with you of September 28, 1978, we agreed to continue the March 30, 1978 Assigned Utility Dispatchers' Agreement, in effect until changed in accordance with the Railway Labor Act, as amended.

If the foregoing properly reflects your understanding of our September 28, 1978 telephone conversation, then sign two (2) copies of this letter, which is being furnished you in quadruplicate, in the space provided and return to the undersigned.

Yours very truly

D. E. Prover

Director, Labor Relations

ACCEPTED BY:

Leonard DeYoung

General Chairman

DATE: Oct 2, 1978

APPROVED BY:

B. C. Hibert

President

Oct 9, 1978

GRAND TRUNK
WESTERN RAILROAD CO.
OCT 16 1978
DIRECTOR, LABOR RELATIONS
DETROIT, MICHIGAN

department, place and date Labor Relations - Detroit, MI
July 6, 1981

Grand Trunk
the Good Track road

file and letter dated

our file 7-31

subject

R. C. Gould
Superintendent
Pontiac, Michigan

H. J. Keel
Superintendent
Battle Creek, Michigan

This has reference to the March 30, 1978 Agreement with the A.T.D.A., covering Assigned Utility Dispatchers.

The question has arisen whether a paid sick day should be counted as a start for A.U.D.'s. In this respect, I find that in my letter of March 20, 1978, in response to a question raised in Superintendent Keels' letter of March 16, 1978, requestion clarifications of the proposed Agreement, the following interpretation appears:

> "With respect to question on vacation and sick pay: Any compensation for eight hours pay counts as a start, i.e.: Vacation, Sick, Holiday, or Carrier Witness."

Copies of my March 20, 1978 letter were furnished to Messrs.-McNutt and Gould.

Copies of this instant letter are being furnished directly to Chief Dispatchers Hurd and Reid.

Yours very truly,

Director, Labor Relations

cc: J. Hurd - Chief Train Dispatcher - Battle Creek
R. Reid - Chief Train Dispatcher - Pontiac

D-1

TRANSPORTATION CENTER PONTIAC, MI DATE: SEPTEMBER 25, 1987

ALL TRAIN DISPATCHERS

SUBJECT: AUD'S RETURNING TO AUD BOARD

There has been a great deal of confusion relating to placement of AUD's on the board at the beginning and during the middle of the work week.

In accordance with the AUD agreement dated March 30, 1978, para. 3 Item D, AUD's will be placed on the AUD board on a first in - first out basis. A few examples of this are as follows:

#1. The first AUD to complete their 5 starts will be placed 1st out at the beginning of the new work week. The second person completing their five starts will be placed second out, etc., etc. Note: During the work week and AUD will return to the bottom of the board when they complete their shift.

#2. A person returning to the AUD board from a vacancy will be placed on the board at the end of their rest days for that position, on the bottom of the board. Note A: A person on a 1600 vacancy with rest days of Sunday & Monday would return to the board at 1600 Tuesday. Note B: A person returning to the board off a vacancy that doesn't require assuming the rest days will be placed at the bottom of the board when their last shift ended. This would be a vacancy ending in the middle of the work week for that vacancy.

The above clarification should reduce our confusion and improve the understanding of "first in-first out".

J. M. Hyatt
Chief Dispatcher

JMH/ca

cc: WBP JSY JHS

AGREEMENT
BETWEEN THE
GRAND TRUNK WESTERN RAILROAD COMPANY
AND ITS EMPLOYEES
REPRESENTED BY THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION

WHEREAS, an agreement dated March 30, 1978, provides for the establishment of Assigned Utility Dispatcher positions;

WHEREAS, paragraph 2 of the March 30, 1978 Assigned Utility Dispatcher Agreement provides as follows:

> Incumbents of Assigned Utility Dispatcher positions who are available their entire work week will be guaranteed not less than five (5) times the straight time Trick Train Dispatcher's rate for such work week. All compensation paid by the Carrier to such employees, including overtime pay, vacation pay, arbitraries, penalty payments, payments made pursuant to paragraph 4, for all days included in a work week will be credited towards the guarantee.

WHEREAS, the parties desire to amend paragraph 2 to the extent that, with one exception, overtime compensation will not be credited toward the guarantee and an employee who immediately moves to the Assigned Utility Board from a hold down or regular assignment and who remains on the Assigned Utility Board as prescribed therein during the remainder of the work week will qualify for the Assigned Utility Board guarantee.

IT IS AGREED:

1. Paragraph 2 of the March 30, 1978 Assigned Utility Dispatcher Agreement is amended so that:

(a) Except when an Assigned Utility Dispatcher works on rest days of his/her own Assigned Utility Dispatcher position, overtime compensation will not be credited toward the guarantee. Overtime compensation will be credited toward the guarantee when an Assigned Utility Dispatcher accepts a seniority call on other than his/her own Assigned Utility Dispatcher position.

(b) Employees who immediately move to the Board from a hold down or regular assignment and are available during the remainder of the work week will qualify for the guarantee.

2. This agreement shall become effective immediately and may be abrogated by either party by giving the other seven (7) days written notification. In such event, paragraph 2 shall be considered unchanged and revert to provisions set forth in the March 30, 1978 Agreement.

FOR THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

N. J. Schmidt
General Chairman

Date: March 9, 1992

R. J. Irvin
President

Date: March 9, 1992

FOR THE GRAND TRUNK WESTERN RAILROAD COMPANY

R. J. O'Brien
Assistant Director
Labor Relations

Date: March 9, 1992

GRAND TRUNK
WESTERN RAILROAD CO.
SEP 06 1983
DIRECTOR, LABOR RELATIONS
DETROIT, MICHIGAN

GT
Grand Trunk Rail System
131 West Lafayette Blvd.
Detroit, Michigan 48226

August 30, 1983
Our File: 7-38

Mr. L. DeYoung, General Chairman
American Train Dispatchers Association
6883 Big Trail
Holly, Michigan 48442

Dear Sir:

This has reference to the Personal Leave Day Agreement dated August 15, 1983 which granted regularly assigned train dispatchers one paid personal day off each calendar year; and to our conference on the matter.

In connection with the above referred to agreement, you raised the point that the situation arises whereby an Extra Train Dispatcher holding dual seniority in the train dispatchers' craft and some "other" craft, is unable to qualify for paid personal days off in the "other" craft because of being required to protect work as a train dispatcher. In this respect, it was your feeling that the employee was being penalized by the loss of a paid personal day off because of protecting service for the Carrier as an extra train dispatcher.

With respect to the foregoing, it was agreed that effective with the calendar year of 1983, an Extra Train Dispatcher holding dual seniority in the train dispatchers' craft and in some "other" craft, who is unable to qualify for a paid personal leave day in the "other" craft because of not performing sufficient service in the preceding calendar year in such "other" craft due to being required to protect train dispatcher work, will be entitled to one paid personal leave day at Train Dispatcher rate of pay, while assigned to work a train dispatcher's vacancy subject to service requirements and providing that the required twenty-four (24) hour advance notice is given.

> EXAMPLE: John Doe holds dual seniority in the Clerks' craft and in the Train Dispatchers' craft. In 1982, John Doe works only 99 days as a clerk because of protecting train dispatcher service on 162 days. As a result of protecting the train dispatcher service, John Doe was unable to qualify under the Clerks' rules for a paid personal leave day in 1983.
>
> John Doe will be allowed one paid personal leave day in 1983 at the Train Dispatchers' rate of pay.

It was also understood that in order for the employee to qualify for the paid personal leave day under this letter-agreement, such employee must have worked a minimum of 100 days in the train dispatchers' craft in the preceding qualifying year and such service as a train dispatcher must be the factor which prevented the employee from qualifying for paid personal leave days in his "other" craft.

The letter-agreement will not be applicable to situations where the employees "other" craft does not have rules providing for paid personal leave days. Also, no payment will be made under this letter-agreement for any day on which the employee is entitled to compensation under any other rule or agreement.

It is further understood that a train dispatcher will not be entitled to claim a paid personal leave day in any given calendar year under both this letter-agreement and the agreement covering regularly assigned train dispatchers.

If the foregoing properly reflects your understanding of the agreement reached on this matter, then sign two copies of this letter, which is being furnished you in quadruplicate, in the space provided and return to the undersigned.

D E Prover
D. E. Prover
Director, Labor Relations

APPROVED BY:

L. DeYoung
L. DeYoung, General Chairman

DATE: September 2, 1983

Carrier's File: 7-14

AGREEMENT
BETWEEN THE
GRAND TRUNK WESTERN RAILROAD COMPANY
AND ITS EMPLOYEES
REPRESENTED BY THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION

IT IS AGREED:

SICK BENEFITS

1. The Sick Benefits Agreement dated February 23, 1976, designated as Article 10, paragraph (d) of the Train Dispatchers Working Agreement, is amended to the extent that paragraph (c) of Section 1 is revised to read as follows:

(c) Upon completion of three calendar years of service a total in each year of service thereafter of thirteen (13) working days' sick leave.

2. This agreement is effective January 1, 1983.

FOR THE AMERICAN TRAIN DISPATCHERS ASSOCIATION:

L. DeYoung, General Chairman

FOR THE GRAND TRUNK WESTERN RAILROAD COMPANY:

D. E. Prover, Director Labor Relations

DATE: Aug 23, 1983

APPROVED:

D. E. Collins, President, ATDA

Grand Trunk Western Railroad Co

131 West Lafayette Boulevard
Detroit, Michigan 48226

February 20, 1976

Our File: 7-14

Mr. L. DeYoung, General Chairman
Amercian Train Dispatchers Association
6883 Big Trail
Holly, Michigan 48442

Dear Sir:

This has reference to the Sick Benefits Rule which became effective for Train Dispatchers on January 1, 1976.

In connection with the Sick Benefits Rule, it was agreed that the following listed employees would be credited with a special sick leave reserve, over and above that provided for in Section 2 of the Sick Benefits Rule, of sixty (60) days effective January 1, 1976. This special sick leave reserve may only be drawn upon for prolonged illnesses, which may occur while the employee is working under the A.T.D.A. Working Agreement, and then only after any and all sick leave benefits provided for in the Sick Benefits Rule have been exhausted. Also, the sixty (60) days credited to this special sick leave reserve will not be subject to the provisions of Section 2 of the Sick Benefits Rule.

DETROIT DIVISION	CHICAGO DIVISION
L. DeYoung	C. F. Burton
B. R. Nelson	E. J. Smith, Jr.
C. J. Grifka	K. E. Hewitt
D. L. Stotler	J. L. Garner
J. R. Sharp	G. B. Tidd
W. C. Faler	R. T. Biggerstaff
G. W. Snyder	R. E. Billings
J. R. McKinnis	B. E. Haire
P. L. Marton	G. R. Baldwin
L. D. Shepard	F. L. Geren
	P. G. Roberts
	D. A. Wagner
	L. A. Lee
	H. F. Metzgar

It was further agreed that effective January 1, 1976, each of the above named employees would be credited with four days in their sick leave reserve provided for in Section 2 of the Sick Benefits Rule.

If any of the above listed Train Dispatchers should forfeit their seniority dates under the A.T.D.A. Working Agreement, as shown on the January 1, 1976 Seniority Roster, following the date of this letter-agreement, they shall forfeit all benefits to which they are entitled under this letter-agreement.

If the foregoing correctly reflects your understanding of our Agreement on this matter, then sign two copies of this letter, which is being furnished you in quadruplicate, in the space provided and return to the undersigned.

Yours very truly

D. E. Provers

Director, Labor Relations

ACCEPTED FOR THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

L. DeYoung
General Chairman

APPROVED BY:

C. R. Fleming - Pres - ATDA

DATE: Feb. 23, 1976

Inter-departmental Correspondence

GT

department, place and date Trans., Pontiac, Michigan June 13, 1991

your file and letter dated

our file

subject

Train Dispatchers: R. L. Hawley
P. J. Smith
B. T. Booth
S. D. Maidment
A. M. Snyder
M. L. McAfee
J. W. Mason
M. D. Clark

This is to advise that effective immediately, you will be allowed 60 sick days in the Special Sick Leave Reserve.

This Special Sick Leave Reserve may only be drawn upon in cases of prolonged illness (absences due to illness of five (5) working days or more), which may occur while the employee is working under and entitled to receive compensation under the ATDA Working Agreement, and then only after any and all Sick Benefits provided for in Article 10 (d) of the current Working Agreement have been exhausted.

J. R. Hurd
J. R. Hurd
Chief Dispatcher

JRH/sb

cc: Mr. N. J. Schmidt - ATDA

GT-11

FILE: 7-14

Contd 5/21/91

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

IT IS AGREED:

1. Effective August 1, 1986, the February 20, 1976 Letter-Agreement, establishing a special sick leave reserve for certain Grand Trunk Western Railroad Train Dispatchers, is abrogated.

2. Effective August 1, 1986, the following Special Sick Leave Reserve is established for the Train Dispatchers hereinafter designated, subject to the conditions set forth in the following:

(a) This Special Sick Leave Reserve is separate and apart from and in addition to the Sick Benefits set forth in Article 10(d) of the current Working Agreement (Article 10(d), having become effective on January 1, 1976).

(b) This Special Sick Leave Reserve may only be drawn upon in cases of prolonged illness (absences due to illness of five (5) working days or more) which may occur while the employee is working under and entitled to receive compensation under the A.T.D.A. Working Agreement and then only after any and all Sick Benefits provided for in Article 10(d) of the current Working Agreement have been exhausted.

(c) This Special Sick Leave Reserve is not subject to any of the provisions of Section 2 of Article 10(d) of the current Working Agreement.

(d) This Special Sick Leave Reserve shall be subject to the same provisions and conditions set forth in Section 8 of Article 10(d) of the current Working Agreement.

(e) If any of the Train Dispatchers listed in paragraph (f) hereof should forfeit their seniority dates under the A.T.D.A. Working Agreement following August 1, 1986, they shall concurrently forfeit all benefits to which they are entitled under this Agreement.

(f) The Train Dispatchers covered by the Special Sick Leave Reserve established by this Agreement and the number of days credited to each of these employees' special sick leave reserve, are as follows:

AGMT.714
RWB.ATDA

DETROIT DIVISION

Name	Days
Rendon, W.C.	60
Petticrew, R. E.	60
Lustig, W. D.	60
Gebard, D. V.	60
Sands, L. L.	60
Frasure, R. D.	60
Ellerbrock, A. A.	60
DeYoung, L.	75
Gosselin, F. M.	60
Nelson, B. R.	75
Grifka, C. J.	75
Stotler, D. L.	75
Sharp, J. R.	75
Faler, W. C.	75
Snyder, G. W.	75
McKinnis, J. R.	75
Marton, P. L.	75
Shapard, L. D.	75
Howard, W. P.	60
Schmidt, N. J.	60
Facknitz, E. A.	60
Campbell, L. P.	60

CHICAGO DIVISION

Name	Days
Burton, C. F.	75
Smith, E. J., Jr.	75
Tidd, G. B.	75
Biggerstaff, R. T.	75
Billings, R. E.	75
Haire, B. E.	75
Baldwin, G. R.	75
Geren, F. L.	75
Roberts, P. G.	75
Wagner, D. A.	75
Lee, L. A.	75
Metzgar, H. F.	75
Rasmussen, A. D.	60
Hamilton, S. R.	60
Thomas, M. L.	60
Ackerman, F. E.	60
Skitz, J. L.	60
Whitmore, A. M.	60

3. No allowance will be made under this Agreement for any day on which the employee is entitled to compensation under any other rule or agreement in effect with the A.T.D.A. or any other Working Agreement in effect on the Grand Trunk Western Railroad.

For The American Train Dispatchers Association

L. DeYoung - General Chairman

D. V. Gebard - General Chairman

W. A. Clifford - Vice President

Date: July 11, 1956

For The Grand Trunk Western Railroad Company

J. F. Corcoran

Vice President, Personnel and Labor Relations

AGMT.714
RWB.ATDA

EXERCISE OF OPTION UNDER SECTION 2 OF ARTICLE 10(d) - SICK BENEFITS, OF THE AMERICAN TRAIN DISPATCHERS ASSOCIATION WORKING AGREEMENT

_____
Name

_____
Social Security No.

According to Carrier's records, as of the close of work on December 31, 19___, you had _____ unused sick leave days for the calendar year 19___. Section 4(a) of Article 10(d) - Sick Benefits, of the A.T.D.A. Working Agreement, requires that you exercise your option under Section 2 of said Rule by January 15, 19___, designating the manner in which you desire to have these unused sick leave days handled.

Please place an "X" in the space provided, indicating your choice of option, and return to your Supervisor on or before January 15. Failure to notify the Carrier of your option by the required date will indicate that you desire to place all of your unused sick leave days into your reserve.

EMPLOYEE'S OPTION

I hereby exercise the following option under Section 2 of Article 10(d) Sick Benefits, of the A.T.D.A. Working Agreement, with respect to the sick leave to which I was entitled under Section 1 therefor, but did not use during the calendar year 19___. (For Examples - See Section 2 of Article 10(d).)

☐ Place all of my unused sick leave in my sick leave reserve.

☐ Allow me a cash payment equal to 25% of my unused sick leave.

☐ Place ____ days of my unused sick leave in my sick leave reserve and allow me a cash payment equal to 25% of the balance of my unused sick leave, i.e., 25% of _____days.

EMPLOYEE'S SIGNATURE_____

DATE_____

FOR COMPANY USE ONLY

Number of days for which cash payment is requested _____

Daily Rate of Pay _____ multiplied by 25% _____

TOTAL AMOUNT TO BE PAID _____

AUTHORIZED BY:_____

MEMORANDUM OF AGREEMENT

between the

GRAND TRUNK WESTERN RAILROAD

and its employees represented by

THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

IT IS AGREED:

In the event of a vacancy subject to the provisions of Article 5(d), and there is no extra train dispatcher available who has not performed five (5) consecutive days train dispatcher service the senior qualified train dispatcher available under the Hours of Service law will be called, on a day to day basis, provided the acceptance of the call will not prevent the senior train dispatcher from working his regular assignment.

This Agreement to become effective December 1, 1975.

FOR THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

General Chairman

FOR THE GRAND TRUNK WESTERN RAILROAD COMPANY

D. E. Powell

Director, Labor Relations

APPROVED BY:

C. R. Henning

President, ATDA

Nov 6 - 1975

Date

Grand Trunk Western Railroad Co
131 West Lafayette Boulevard
Detroit, Michigan 48226

August 16, 1977

Our File: 7-29

Mr. L. DeYoung, General Chairman
American Train Dispatchers Association
6883 Big Trail
Holly, Michigan 48442

Dear Sir:

This has reference to our discussions relative to your Organizations request for amendment to Article 4(b) - Forfeiture of Seniority of the current Working Agreement.

It is Carrier's suggestion that the proposed amendment be accomplished by adding the following "note" to Article 4(b):

> "NOTE: An extra train dispatcher who relinquishes or forfeits his seniority under this Article 4(b) or under Article 4(c)(3), shall not again be considered for work as an extra train dispatcher until a period of ninety (90) days has elapsed from the date of his relinquishment or forfeiture of seniority."

This Amendment to Article 4(b) to become effective on August 25, 1977.

If the foregoing meets with your concurrence, then sign two (2) copies of this letter, which is being furnished you in quadruplicate and return to the undersigned.

Yours very truly

D. E. Brown

Director, Labor Relations

ACCEPTED BY:

L. DeYoung

General Chairman - A.T.D.A.

APPROVED BY:

R. C. Hilbert

DATE: 8/22/77

Grand Trunk Western Railroad Co.
131 West Lafayette Blvd
Detroit, Michigan 48226

October 16, 1986

Our File: 7-47

Mr. L. DaYoung, General Chairman
American Train Dispatchers Association
6883 Big Trail
Holly, Michigan 48442

Dear Sir:

This has reference to former Battle Creek Train Dispatcher, Ms. A. M. Whitmore, who elected to forfeit her Train Dispatcher seniority, effective October 5, 1986, rather than to transfer to Pontiac, Michigan, in accordance with the Agreement entered into between your Organization and this Carrier, dated September 29, 1986, covering the consolidation of the Battle Creek Train Dispatching Office into the Train Dispatching Office at Pontiac, Michigan.

Ms. A. M. Whitmore has now reconsidered her decision regarding her desire to work as a Train Dispatcher and has requested consideration for assignment as an Extra Train Dispatcher at the Pontiac, Michigan Train Dispatching Office.

In view of the present shortage of Extra Train Dispatchers in the Pontiac Train Dispatching Office, and without setting a precedent in future cases which may arise, Carrier is agreeable to waiving the ninety (90) day restriction currently contained in the Letter-Agreement dated August 16, 1977, amending Article 4(b) of the A.T.D.A. Working Agreement, and permit Ms. Whitmore's immediate assignment as an Extra Train Dispatcher at the Pontiac, Train Dispatching Office, subject to the following:

1. Ms. Whitmore's seniority as an Extra Train Dispatcher will commence on her first day of service as an Extra Train Dispatcher at Pontiac.

2. All benefits under the Train Dispatchers' Working Agreement, such as sick leave, vacation, personal days, etc., will as far as Ms. Whitmore is concerned, be applicable to Ms. Whitmore on the same basis as any other new employee under the Train Dispatchers' Working Agreement.

3. Carrier is agreeable to allowing Ms. A. M. Whitmore benefits equal to either those provided for in Section 10 of the June 16, 1966 Mediation Agreement, or paragraph 7 of the September 29, 1986 Agreement, in the event she elects to change her place of residence to the immediate vicinity of Pontiac, Michigan, following her establishment of seniority as an Extra Train Dispatcher at Pontiac. Ms. Whitmore would also be required to accept the obligations imposed by the provisions of the cited agreements in accepting such benefits.

4. Carrier is also agreeable to allowing Ms. A. M. Whitmore benefits equal to those provided for in paragraph 9 of the September 29, 1986 Agreement, subject to the conditions contained therein.

If the foregoing meets with your concurrence, then sign one copy of this Agreement, which is being furnished you in duplicate, in the space provided, and return to the undersigned.

Yours very truly,

E. M. Bouchard

E. M. Bouchard
Director, Labor Relations

ACCEPTED BY:

L. DeYoung

L. DeYoung, General Chairman

Date: Oct 16, 1986

CHECK-OFF AGREEMENT
BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION

- - - - - - - - - - -

In accordance with the provisions of Article II of the National Collective Bargaining Agreement signed at Washington, D.C., on April 27, 1973, the following Agreement by and between Grand Trunk Western Railroad Company hereinafter referred to as the "Carrier" and employees represented by the American Train Dispatchers Association hereinafter referred to as the "Association", shall be made effective January 1, 1980.

1. (a) It is agreed that the Carrier will deduct from the wages of employees, membership dues, initiation fees, and assessments (excluding fines and penalties) as may be uniformly required as a condition of the employees acquiring and/or retaining membership in the Association upon their written authorization in the form (Individual Authorization Form) agreed upon by the parties hereto, copy of which is attached, designated "Attachment A" and made a part hereof.

(b) The Officer of the Association designated by the General Chairman shall promptly notify in writing the Officer or Officers designated by the Carrier of any special assessments or changes in amounts of fees or dues; however, the deduction amounts may not be changed more often than once every month.

2. (a) Individual authorizations to be effective for a particular month must be in the possession of the Carrier not later than the fifth day of the month in which such deductions are to be made.

(b) The designated Officer of the Association shall furnish to the Carrier, with copies to appropriate units of the Association an initial statement (Attachment B), by lodges, in Social Security Account No. order, and name, certified by him, showing deductions to be made from each such member, such statement to be furnished together with individual authorization forms to cover, not later than the fifth day of the month in which the deductions become effective. Subsequent monthly additions or deletions will be based on the initial statement, furnished in the same manner as the initial statement required hereby. (Additions - Attachment B; Deletions - Attachment C).

(c) The Association shall assume full responsibility for the procurement, execution and delivery of forms, covered by this Agreement.

3. Deductions will be made from wages earned in the third pay period of each month which will be for dues of the member for the following month which shall be remitted by check to the Officer of the Association as may be designated by the General Chairman by the twentieth day of the month following the month in which deductions were made, i.e., dues deducted in third pay period earnings of October for November dues to be remitted by November 20, etc., together with a machine-produced list prepared in triplicate for each lodge, in alphabetical order, including the employee's name, Social Security Account Number of payroll identification numbers, and amount of deductions, the total amount of deductions for the lodge, and if no deductions are made for a particular individual on the list, the Carrier shall show the reason therefor. The Carrier will also furnish a summary statement for all lodges, itemizing the number of employees and amount deducted. If the earnings of the employee will not permit the full amount of the Association deductions, no deduction will be made for that month.

4. The following payroll deductions will have priority over the Association deductions as covered by this Deduction Agreement:

Federal, State and Local Taxes.

Other deductions required by law and court orders.

Group insurance premiums and hospital association dues.

Amounts due Carrier.

5. The requirements of this Agreement shall not be effective with respect to any individual employee until the Carrier has been furnished with written authorization of assignment of wages of such monthly membership dues, initiation fees, and assessments. Such assignment shall be revocable in writing after the expiration of one year upon thirty (30) calendar days advance notice to the Association and Carrier by Registered Mail or upon termination of this Agreement, whichever occurs sooner.

6. Any question arising as to the correctness of the amount deducted shall be handled between the employee involved and the Association and any complaints against the Carrier in connection therewith shall be handled by the Association on behalf of the employee concerned.

7. To facilitate application of this Agreement, the Carrier will furnished the General Chairman of the property a list showing the name, Social Security Account number or payroll identification number, job location and classification, of employees hired, recalled, or terminating their employment during the calendar month just ended and, in case of termination, the reason therefor. This listing to be furnished by no later than the end of the first month following the month for which the statement is prepared i.e., listing covering the month of October to be furnished by no later than the last day of November.

8. In the event of a change in representation of employees now represented by the Association this Agreement shall be automatically terminated as of the date official notification is received from the National Mediation Board of such change in representation.

9. This Agreement shall not be used in any manner, either directly or indirectly, as a basis for a grievance or time claim, by, or in behalf of, an employee predicated upon any alleged violation or misapplication of, or non-compliance with, any part of this Agreement.

10. Except for remitting to the Association the monies deducted from the wages of employees, the Association shall indemnify, defend and save harmless the Carrier from any and all claims, demands, liability, losses or damage resulting from the entering into and the complying with the provisions of this Agreement.

11. This Agreement shall become effective on the first day of January, 1980, and unless terminated under Section 8 hereof, shall continue in effect until changed under the provisions of the Railway Labor Act, as amended.

Signed at Detroit, Michigan on December 4, 1979.

FOR THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

Harry W. Snyder
General Chairman

FOR THE GRAND TRUNK WESTERN RAILROAD COMPANY

D. E. Prowse
Director, Labor Relations

[3]

ATTACHMENT "A"

GRAND TRUNK WESTERN RAILROAD COMPANY

WAGE ASSIGNMENT AUTHORIZATION

Supervisor of Payrolls
Grand Trunk Western Railroad Company
Detroit, Michigan 48226

Name _____ Social Security No. _____
(Last) (First) (Middle Initial)

Home Address _____ Lodge No. _____
(Street and Number)

Department _____

_____ Occupation _____
(City or Town)

I hereby assign to the American Train Dispatchers Association that part of my wages necessary to pay my periodic union dues, initiation fees and assessments (not including fines and penalties) as reported to the Grand Trunk Western Railroad Company by the General Chairman of the Association or his successor, in m o n t h l y statement, certified by him, as provided under the Check-Off Agreement entered into by and between the Organization and the Railroad Company effective _____ _____ and I hereby authorize the Railroad Company to deduct from my wages all such sums, and pay them over to such designated representative of the Association in accordance with the said Check-Off Agreement. This authorization may be revoked in writing by the undersigned at any time after the expiration of one (1) year or upon the termination of the aforesaid Check-Off Agreement or upon the undersigned changing membership to another qualified labor organization or upon the termination of the rules and working conditions agreement between the Company and the Association whichever occurs sooner.

_____, 19__ _____ _____
(Date) (Signature) (Lodge No.)

ATTACHMENT "B"

GRAND TRUNK WESTERN RAILROAD COMPANY

Lodge No._____

DEDUCTIONS FOR:_____ DATE PREPARED_____
(Period) (Month) (Day) (year)

S E T - U P

SIGNED:_ _____
Secretary - Treasurer
American Train Dispatchers Association

For Payroll Dept. Use

Deduction Code	Dept. No.	Social Security Number	Employee's Name	Amount of Deduction

ATTACHMENT "C"

GRAND TRUNK WESTERN RAILROAD COMPANY

Lodge No._____

DEDUCTIONS FOR:_____ DATE PREPARED_____
(Period) (Month) (Day) (Year)

D E L E T E

SIGNED:_____
Secretary-Treasurer
American Train Dispatchers Association

For Payroll Dept. Use

Deduction Code	Dept. No.	Social Security Number	Employee's Name	Amount of Deduction

AGREEMENT
BETWEEN THE
GRAND TRUNK WESTERN RAILROAD COMPANY
AND ITS EMPLOYEES
REPRESENTED BY THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION
UNDER THE GTW-ATDA AGREEMENT

IT IS AGREED:

PERSONAL LEAVE DAY

A. Effective January 1, 1983, subject to the conditions enumerated, regularly assigned Train Dispatchers will be granted one (1) personal leave day's pay per calendar year at the employee's established rate of pay for time absent account of personal reasons.

B. For employees hereafter beginning regularly assigned Train Dispatcher service, subject personal leave day allowance will commence on January 1 of the calendar year following the year in which such employee begins regularly assigned Train Dispatcher service.

C. Subject personal leave day will not be accrued from one year to another.

D. A minimum of one hundred (100) days compensated service must be rendered by employee under the A.T.D.A. Working Agreement in any current calendar year in order to qualify for the leave day allowance referred to herein for the succeeding calendar year.

E. No allowance will be made under this rule for any day on which the employee is entitled to compensation under any other rule or agreement.

F. Subject leave day allowance under two or more agreements held by different organizations on this Carrier shall not be combined to create dual benefits or allowances while employed in Train Dispatcher status.

G. Subject personal leave day may be taken on an employee's regularly assigned work day upon twenty-four (24) hours' advance notice to the proper Carrier Officer and may be taken only when consistent with the requirements of the Carrier's service.

H. Upon termination of employment relationship with the Company, retirement or termination of status from a regularly assigned Train Dispatcher position, the provisions of this Agreement will not be applicable.

1. This Agreement is effective January 1, 1983.

FOR THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

L. DeYoung
General Chairman

FOR THE GRAND TRUNK WESTERN RAILROAD COMPANY

D. E. Prover
Director, Labor Relations

APPROVED:

D. E. Collins
President, A.T.D.A.

Date: August 15, 1982

Detroit, Michigan

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND ITS EMPLOYEES
REPRESENTED BY THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION
ON THE
GRAND TRUNK WESTERN RAILROAD COMPANY
AND THE FORMER
DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

- - - - - - - - - - - - - -

It is understood and agreed that this Agreement is in full and final settlement of the following described Section 6 Notices, Notices served under the New York Dock Conditions and/or the June 16, 1966 Mediation Agreement (Case No. A-7460), and is in disposition of the requirements set forth in Section 11 of the September 4, 1979 Agreement pertaining to the acquisition of the former Detroit, Toledo and Ironton Railroad Company (D.T.& I.) by the Grand Trunk Western Railroad Company (G.T.W.).

1. The following Section 6 Notices, served by the Organization under the Railway Labor Act, as amended, are withdrawn:

DATE OF NOTICE	SERVED ON	CONTENTS
01/10/81	Former D.T.& I.	Request for 10% wage increase.
12/13/82	Former D.T.& I.	10% pay increase - handling C.T.C. System on Dearborn Subdivision.
06/20/83	Former D.T.& I.	10% pay increase - handling proposed R.C.B.S.

DATE OF NOTICE	SERVED ON	CONTENTS
02/27/85	G.T.W. & former D.T.& I.	$50.00 payment per handling of cabooseless trains.
02/28/85	G.T.W. & former D.T.& I.	$15% pay increase - handling M. of W. procedures.
02/28/85	G.T.W. & former D.T.& I.	Increase vacation pay one day per vacation week.
09/30/85	G.T.W.	Request for inclusion of Chief Dispatchers under A.T.D.A. Scope Rule.

2. Agreements identified as "A" through "K" inclusive, attached hereto and made a part hereof shall constitute coming to agreement on a single working agreement for all employees of the G.T.W. and former D.T.& I. represented by the A.T.D.A., as provided for in Section 11 of the September 4, 1979 Agreement.

3. Carrier's notice dated August 16, 1985, served under Section 4 of the New York Dock Conditions, covering the transfer of the Train Dispatcher work/functions/territory and Train Dispatcher employees from Flat Rock, Michigan (former D.T.& I.) to the Train Dispatcher Office at Pontiac, Michigan, shall be considered as the appropriate notice required under Agreement "A" hereof and shall be subject to the conditions of said Agreement "A". Conditions covering the transfer proposed in Carrier's notice of August 16, 1985, are set forth in Agreement "L" attached hereto.

4. Carrier's notice dated August 16, 1985, served under Section 4 of the Mediation Agreement dated June 16, 1966 (Case No. A-7460) is withdrawn.

5. Agreement "M" - Personal Leave Days, hereto supercedes the former Personal Leave Day Agreement of January 1, 1983.

6. In full and final settlement of the Carrier's Section 6 Notice, dated September 9, 1975, served on the General Chairman of the A.T.D.A. (G.T.W.), the parties hereto agree to the Time Limit Rule set forth in Agreement "N" attached hereto.

7. This Agreement to be effective August 1, 1986.

FOR THE EMPLOYEES:

L. DeYoung, General Chairman

D. V. Gebard, General Chairman

W. A. Clifford, Vice President

Date: July 16, 1986

ATDA.GTW

FOR THE GRAND TRUNK WESTERN RAILROAD COMPANY:

J. F. Corcoran, Vice President-Personnel and Labor Relations

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

- - - - - - - - - -

It is agreed as follows:

I. While the parties recognize that Section 4 of the September 4, 1979 Implementing Agreement does not require an implementing agreement prior to transferring work and/or employees, the parties do recognize that it is preferable to have an established procedure for carrying out such transfers, therefore, it is the intent and purpose of this Agreement to provide for an orderly transfer of employees, work and positions from the former D.T.& I. Railroad to the G.T.W. Railroad. It is also the intent and purpose of this Agreement that the G.T.W. will not be required to hire a new employee or promote an employee from another craft at any point for a position that is subject to the G.T.W. - A.T.D.A. Working Agreement at a time that an A.T.D.A. protected employee is receiving protection compensation as a "Dismissed Employee", or as a "Displaced Employee" who is working in another craft.

II. Following the effective date of this Agreement the G.T.W. shall have the right to transfer work and/or employees from the former D.T.& I. Railroad to the G.T.W. as provided herein. In the case of all such transfers, 30 days (90 days if the transfer of employees requires a change in residence) written notice shall be given to the employees and the General Chairman, A.T.D.A. Such notice

to contain a full and adequate statement of the proposed changes to be effected including an estimate of the number of employees affected. Transfers may be placed into effect at any time after expiration of the pertinent notice and position advertisement/awarding periods. Employees refusing transfer will be treated as occupying the position which he/she rejects, until such time as he/she obtains and retains a position producing equal or greater compensation.

III. Any position subject to and covered by the A.T.D.A. Working Agreement unfilled through the seniority processes which would require the hiring of a new employee or the promotion of an employee from another craft may be offered to those A.T.D.A. "Dismissed" or "Displaced" (and working in another craft) protected employees receiving protective compensation in seniority order, with the understanding that if no protected employee accepts the position offered, then the junior protected employee who would not be required to change his/her place of residence (as defined in Agreement "H" dated August 1, 1986), must accept such position or be treated as occupying the position which he/she rejects, until such time as he/she obtains and retains a position producing equal or greater compensation. If the junior "Dismissed" or "Displaced" protected employee should refuse the position offered, then the Carrier will continue to offer such position in reverse seniority to protected employees who would not be required to change their place of residence until the position

offered is filled. Again, those employees rejecting the offer in reverse order of seniority will be treated as occupying the position which he/she rejects, until such time as he/she obtains and retains a position producing equal or greater compensation.

If the aforementioned procedure does not result in the position being filled then the position may be offered to those protected employees, in reverse order of seniority, who would be required to "change their residence" (as defined in Agreement "H" dated August 1, 1986). Those employees rejecting the offer in reverse order of seniority will be treated as occupying the position which he/she rejects, until such time as he/she obtains and retains a position producing equal or greater compensation.

IV. Seniority of employees transferred pursuant to the provisions of Paragraphs II and III of this Agreement shall be transferred to their new Seniority District.

V. This Agreement is intended to clarify conditions, responsibilities and obligations of protected employees. Nothing contained in Section II and III hereof shall be construed to eliminate or reduce any existing conditions, responsibilities pertaining to protected employees as set forth in any rule, agreement or in "New York Dock Conditions", I.C.C. Finance Docket 28250, as amended by Agreement on the G.T.W. RR. Co.

VI. This Agreement to be effective August 1, 1986.

FOR THE EMPLOYEES

L. DeYoung, General Chairman

D. V. Gebard, General Chairman

W. A. Clifford, Vice President

FOR THE GRAND TRUNK WESTERN RAILROAD:

J. F. Corcoran, Vice President-Personnel and Labor Relations

Date: July 11, 1986
ATDA.A

AGREEMENT "B"
M-20-12-01(8)

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

- - - - - - - - - -

It is agreed as follows:

A. Prior service of an employee on the former D.T.& I.RR. will be counted in qualifying for vacation under Article 6(b) as amended by National Agreements, of the G.T.W. Working Agreement, however, vacation days taken by a former D.T.& I. employee in 1986 prior to the effective date of this agreement will be taken into account when determining the number of vacation days, if any, the employee is entitled to for the remainder of 1986.

> EXAMPLE: Effective with the calendar year of 1986 a former D.T.& I. employee qualified under the former D.T.& I. Vacation Rule for an annual vacation of fifteen work days with pay. In 1986 prior to the effective date of this agreement he is granted 10 days paid vacation. In 1986 subsequent to the effective date of this agreement such employee would be entitled to a total of 5 days paid vacation.

B. This Agreement to be effective August 1, 1986.

FOR THE EMPLOYEES

L. DeYoung, General Chairman

D. V. Gebard, General Chairman

W. A. Clifford, Vice President

Date: July 11, 1986
ATDA-B

FOR THE GRAND TRUNK WESTERN RAILROAD:

J. F. Corcoran, Vice President - Personnel and Labor Relations

AGREEMENT "C"
M-20-12-01(8)

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

- - - - - - - - - - -

It is agreed as follows:

A. In the application of Article 4(a) - Seniority - of the G.T.W. Working Agreement the seniority of former D.T.& I. employees shall be the same under Article 4(a) as they hold on the former D.T.& I. on the effective date of this Agreement.

B. This Agreement to be effective August 1, 1986.

FOR THE EMPLOYEES

L. DeYoung, General Chairman

D. V. Gebard, General Chairman

W. A. Clifford, Vice President

Date: July 11, 1986

ATDA.C

FOR THE GRAND TRUNK WESTERN RAILROAD:

J. F. Corcoran, Vice President-Personnel and Labor Relations

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

- - - - - - - - - -

It is agreed as follows:

SICK LEAVE

1. The January 1, 1976 Sick Leave Agreement in effect between the A.T.D.A. and the G.T.W. RR. Co. shall be applicable to employees of the former D.T.& I. RR., regardless of the fact that such employees did not perform service under such Agreement in 1986.

2. Former D.T.& I. employees shall have the number of accrued sick leave (reserve) days they have to their credit under Article VI (C), Paragraph 2, of the former A.T.D.A. - D.T.& I. Working Agreement, on the effective date of this Agreement placed in the Sick Leave Reserve under Section 2(a) of the January 1, 1976 Agreement.

EXAMPLE NO. 1: Employee on January 1, 1986 has thirty (30) days accrued (in reserve) and is entitled to thirteen (13) days sick leave in 1986 under Article VI (C) of the former A.T.D.A. - D.T.& I. Agreement. Prior to the effective date of this Agreement such employee uses five (5) days sick leave. On the effective date of this Agreement thirty (30) days will be placed in such employee's GT Sick Leave Reserve and such employee will have eight (8) sick leave days remaining in 1986.

EXAMPLE NO. 2: Employee on January 1, 1986 has thirty (30) days accrued (in reserve) and is entitled to thirteen (13) days in 1986 under Article VI (C) of the former A.T.D.A. - D.T.& I. Agreement. Prior to the effective date of this Agreement such employee uses fifteen (15) days sick leave. On the effective date of this Agreement twenty-eight (28) days will be placed in such employee's GT Sick Leave Reserve.

3. Nothing in this Agreement is to be construed in any manner whatsoever so as to create a sick leave entitlement for an employee in 1986 of more than the maximum number of days provided for in either the former D.T.& I. Article VI (C) or the G.T.W. Agreement of January 1, 1976.

4. This Agreement to be effective August 1, 1986.

FOR THE EMPLOYEES

L. DeYoung, General Chairman

D. V. Gebard, General Chairman

W. A. Clifford, Vice President

Date: July 11, 1986

ATDA.D

FOR THE GRAND TRUNK WESTERN RAILROAD:

J. F. Corcoran, Vice President-Personnel and Labor Relations

AGREEMENT "E"
M-20-12-01(8)

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

- - - - - - - - - - -

It is agreed as follows:

A. Paragraphs (b) and (c) of Section 2 of the September 4, 1979 agreement pertaining to the acquisition of the D.T.& I. Railroad by the G.T.W. read as follows:

"(b) All employees in the active employment of G.T.W., D.T.& I. or D.T.S.L. on the date of acquisition of D.T.& I. by G.T.W. shall be 'protected employees'.

(c) All other employees (i.e., those on authorized leave of absence or furlough) with an employment relationship with G.T.W., D.T.& I. or D.T.S.L. on such date of acquisition shall become 'protected employees' as of the date they become actively employed by their respective carrier employer."

The following quoted language (appearing in the above quoted paragraphs) is interpreted and defined as follows:

Paragraph (b): "Active Employment" - This term includes (1) employees holding regularly assigned positions on the date of this Agreement, and (2) employees working vacancies but whose seniority entitles them to hold regularly assigned positions on the date of this Agreement who

continue in service thereon for a minimum of 21 days following the date of this agreement.

Paragraph (c): "become actively employed" - This term is intended to mean the date an employee returns from leave of absence or is recalled from an extra Train Dispatcher status to a regular assigned position and remains in continuous service for a minimum of 21 days following the date of this Agreement.

B. This Agreement to be effective August 1, 1986.

FOR THE EMPLOYEES

L. DeYoung, General Chairman

D. V. Gebardi, General Chairman

W. A. Clifford, Vice President

Date: July 11, 1986

ATDA.E

FOR THE GRAND TRUNK WESTERN RAILROAD:

J. F. Corcoran, Vice President-Personnel and Labor Relations

AGREEMENT "F"
M-20-12-01(8)

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

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It is agreed as follows:

A. Upon the effective date of this Agreement the rates of pay, working conditions and rules contained in existing collective bargaining Agreements, in effect between the G.T.W. Railroad Company and the A.T.D.A. will apply to those employees on the former D.T.& I. Railroad occupying positions represented by the A.T.D.A. On the same date all collective bargaining Agreements in effect between the former D.T.& I. and the A.T.D.A. shall be considered as abrogated.

B. This Agreement to be effective August 1, 1986.

FOR THE EMPLOYEES

L. DeYoung, General Chairman

D. V. Gebard, General Chairman

W. A. Clifford, Vice President

Date: July 11, 1986

ATDA

FOR THE GRAND TRUNK WESTERN RAILROAD:

J. F. Corcoran, Vice President-Personnel and Labor Relations

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

- - - - - - - - - - -

I. Paragraph (c) of Article I Scope, Definitions, of the G.T.W. - A.T.D.A. January 1, 1955 Agreement provides:

"(c) - Centralized Traffic Control:

Any employee dispatching trains over a circuit or circuits which control the movement of trains by the method commonly known as Centralized Traffic Control is a Train Dispatcher."

II. It is agreed:

1. The handling of any Centralized Traffic Control (CTC) or Traffic Control System (TCS) work currently performed under the direction of Train Dispatchers by employees other than those represented by the A.T.D.A. on the territory covered by the former D.T.&I. Railroad (Mile Posts 19.2 to 39.8) may continue to be performed under the direction of Train Dispatchers on such territory, without any penalty accruing to employees represented by the A.T.D.A.

2. The Carrier may at its sole discretion transfer CTC or TCS work (covering the territory referred to in Item 1 above) to employees covered by the G.T.W. - A.T.D.A. Agreement without any increase in

compensation for such additional duties and responsibilities.

III. This Agreement is effective August 1, 1986.

FOR THE EMPLOYEES

L. DeYoung, General Chairman

D. V. Gebard, General Chairman

W. A. Clifford, Vice President

Date: July 11, 1986

ATDA.G

FOR THE GRAND TRUNK WESTERN RAILROAD:

J. F. Corcoran, Vice President-Personnel and Labor Relations

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

- - - - - - - - - -

It is agreed:

Section 6 of the September 4, 1979 Acquisition Agreement is amended to read as follows:

"Section 6 - The term 'change of residence' shall be interpreted to mean the following:

A change in residence shall be considered 'required' if a transferred employee changes his residence to a place located within thirty (30) normal travel route miles of his new work location and such new work location exceeds thirty (30) normal travel route miles from his place of residence on the date of change; except that a change in residence shall not be considered 'required' if the new work location is located in excess of thirty (30) miles from his residence but is located no further than the distance previously traveled by the employee from his residence to his old work location."

This Agreement to be effective August 1, 1986.

FOR THE EMPLOYEES

L. DeYoung, General Chairman

D. V. Gebard, General Chairman

W. A. Clifford, Vice President

Date: July 11, 1986

ATDA

FOR THE GRAND TRUNK WESTERN RAILROAD:

J. F. Corcoran, Vice President-Personnel and Labor Relations

AGREEMENT "I"
M-20-12-01(8)

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

- - - - - - - - - - -

It is agreed:

All employees holding seniority and standing for calls as Extra Train Dispatchers on the effective date of this Agreement, will be considered as adversely affected employees and will be entitled to the protection, conditions, and obligations of the New York Dock Conditions, I.C.C. Finance Docket 28250, until such time as they can qualify as "protected employees" under Section 2 of the September 4, 1979 Acquisition Agreement.

This Agreement to be effective August 1, 1986.

FOR THE EMPLOYEES

L. DeYoung, General Chairman

D. V. Gebard, General Chairman

W. A. Clifford, Vice President

Date: July 16, 1986

ATDA.I

FOR THE GRAND TRUNK WESTERN RAILROAD:

J. F. Corcoran, Vice President-Personnel and Labor Relations

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

- - - - - - - - - - -

It is agreed that in the application of the New York Dock Conditions to employees represented by the A.T.D.A. on the G.T.W. RR. Co., pursuant to Section 1 of the September 4, 1979 Acquisition Agreement, paragraph (a) of Section 5 - Displacement Allowances, and paragraph (a) of Section 6 - Dismissal allowances, shall be revised to read as follows:

"5. Displacement allowances - (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the daily compensation received by him in the position in which he is retained and the average daily compensation received by him in the position from which he was displaced. The daily rate of the position from which the employees is displaced, shall be adjusted to reflect subsequent general wage increases.

Each displaced employee's monthly displacement allowance shall be determined by multiplying the daily rate of the position held by

the employee on August 1, 1986, adjusted to reflect subsequent general wage increase, by the number of days, Monday through Friday, in each current month.

EXAMPLE: On August 1, 1986, John Doe held a position of Train Dispatcher with a daily rate of $144.03. In August of 1986, there are twenty-one (21) days falling on the days of Monday through Friday. Twenty-one (21) days times $144.03, equals $3,024.63. John Doe's displacement allowance for test purposes for August, 1986 is $3,024.63.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work then the aforesaid monthly displacement allowance (adjusted to reflect subsequent general wage increases), he shall be paid the difference, less compensation for time lost on account of his voluntary absences.

"6. Dismissal allowances. - (a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to the daily rate of pay of the regular position held under the A.T.D.A. - G.T.W. RR. Co. Working Agreement on August 1, 1986, multiplied by the number of days Monday through Friday, in the current month for which the dismissal allowance is being calculated. The daily rate of the regular position held by the employee on August 1, 1986, shall be adjusted to reflect subsequent general wage increases.

EXAMPLE: John Doe held a regular Train Dispatcher position on August 1, 1986 with a daily rate of $144.03. On completion of his tour of duty on August 31, 1986, John Doe is displaced and cannot hold a regular position under the A.T.D.A. - G.T.W. RR. Co. Working Agreement. While John Doe holds a second craft seniority with the G.T.W. RR. Co., he is unable to hold a regular position in his second craft and is considered as deprived of employment. In September of 1986, there are twenty-one (21) days falling on the days of Monday through Friday. Twenty-one (21) days times $144.03 equals $3,024.63. John Doe's dismissal allowance for the month of September, 1986, is $3,024.63, subject to the conditions set forth in paragraphs (b), (c) and (d) of Section 6 of the New York Dock Conditions."

This Agreement to be effective August 1, 1986.

FOR THE EMPLOYEES

R. DeYoung

R. DeYoung, General Chairman

D. V. Gebard, General Chairman

W. A. Clifford

W. A. Clifford, Vice President

Date: July 11, 1986

ATDA.KO

FOR THE GRAND TRUNK WESTERN RAILROAD:

J. F. Corcoran

J. F. Corcoran, Vice President-Personnel and Labor Relations

AGREEMENT "K"
M-20-12-01(8)

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

It is agreed:

BEREAVEMENT LEAVE

The following provisions are applicable to regularly assigned Train Dispatchers including Assigned Utility Dispatchers:

1. Bereavement leave, not in excess of three (3) calendar days, following the date of death will be allowed in case of death of an employee's brother, sister, parent, child, spouse or spouse's parent, brother or sister. In such cases a basic day's rate of pay will be allowed for the number of working days lost during bereavement leave. Employees involved will make provision for taking leave with their supervising officials in the usual manner.

2. This Agreement is effective August 1, 1986.

FOR THE EMPLOYEES

L. DeYoung, General Chairman

D. V. Gebard, General Chairman

W. A. Clifford, Vice President

Date: July 11, 1986

ATDA:LK

FOR THE GRAND TRUNK WESTERN RAILROAD:

J. F. Corcoran, Vice President-Personnel and Labor Relations

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND
AMERICAN TRAIN DISPATCHERS ASSOCIATION

- - - - - - - - - - -

The use hereinafter of the initials D.T.& I. refers to the former Detroit, Toledo and Ironton Railroad Company that merged with the Grand Trunk Western Railroad Company effective January 1, 1984.

The purpose of this Agreement is to provide for a rearrangement of Train Dispatcher work/functions/territory and Train Dispatcher employees of the former D.T.& I. Railroad as proposed in Carrier's August 16, 1985 Notice and to provide protection of the interests of the employees who may be adversely affected as a result thereof pursuant with the "New York Dock Conditions".

IT IS AGREED:

I. All Train Dispatching work/functions/territory and the below listed Train Dispatcher employees of the former D.T.& I. will be transferred from Flat Rock, Michigan to the Train Dispatcher Office at Pontiac, Michigan:

Rendon, W. C.

Petticrew, R. E.

Lustig, W. D.

Gebard, D. V.

Frasure, R. D.

Ellerbrock, A. A.

II. (a) Effective with the date of transfer, the seniority dates of the below listed employees will be dovetailed into the Detroit Division Train Dispatcher Seniority Roster:

Name	Seniority Date
*Hyatt, J. M.	06-06-66
Rendon, W. C.	07-02-68
Petticrew, R. E.	08-17-70
Lustig, W. D.	01-09-77
Gebard, D. V.	04-19-77
*Sands, L. L.	05-18-79
Frasure, R. D.	11-20-81
Ellerbrock, A. A.	04-11-84

*Seniority retained pursuant with Article 4(c).

III. Prior to the date of the transfer provided for in paragraphs I hereof, all positions in the Pontiac Train Dispatcher Office will be bulletined and the

Train Dispatchers from Flat Rock and Pontiac may submit applications therefor on the basis of their dovetailed seniority. If bidding on more than one position, the Train Dispatchers will indicate their desire for the positions by showing first choice, second choice, etc., on their applications.

IV. In connection with this transaction only, the Carrier will allow, for those employees entitled to moving expenses who are required to make a "change of residence" and who own a residence, a lump sum payment of $7,500.00 ($2,000.00 in the case of employees who do not own a residence) that would be in lieu of all expenses and reimbursements they would otherwise have been entitled to under Section 9 - Moving Expenses, and Section 12 - Losses From Home Removal, of the New York Dock Conditions, and in lieu of the $900.00 relocation allowance and other benefits provided for in Section 5 of the September 4, 1979 Acquisition Agreement.

V. The Train Dispatcher positions located in the Detroit Division Train Dispatcher Office at Pontiac will assume the transferred Train Dispatcher work/functions/territory effective with the date of such transfer.

VI. It is understood that there shall be no pyramiding or duplication of benefits under this Agreement and/or any other agreement or protective arrangement.

VII. This Agreement will become effective upon thirty (30) days' notice to the Organization to that effect.

FOR THE EMPLOYEES

L. DeYoung, General Chairman

D. V. Gebard, General Chairman

W. A. Clifford, Vice President

Date: July 11, 1986
ATDA.MT

FOR THE GRAND TRUNK WESTERN RAILROAD:

J. F. Corcoran, Vice President-Personnel and Labor Relations

Grand Trunk Western Railroad Co.
131 West Lafayette Blvd.
Detroit, Michigan 48226

July 11, 1986

File: M-20-12-01(8)

Mr. L. DeYoung, General Chairman
American Train Dispatchers Association
6883 Big Trail
Holly, Michigan 48442

Mr. D. V. Gebard, General Chairman
American Train Dispatchers Association
19650 South Glen Blvd., Apt. D
Trenton, Michigan 48183

Gentlemen:

This has reference to Agreement "M", effective August 1, 1986, covering Personal Leave Days.

In view of the lateness in the year of 1986 for effecting this Agreement, Carrier is agreeable to amending paragraph B of such Agreement to provide that Personal Leave Days earned for 1986, and not used by December 31, 1986, may be carried over into 1987, up to and including March 31, 1987.

Yours very truly,

J. F. Corcoran

J. F. Corcoran
Vice President
Personnel and Labor Relations

cc: Mr. W. A. Clifford, Vice President, ATDA

Agreement "M"
Carrier's File: 7-38

AGREEMENT BETWEEN
THE GRAND TRUNK WESTERN RAILROAD COMPANY
AND ITS EMPLOYEES REPRESENTED BY
THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

IT IS AGREED:

Personal Leave Days

A. Effective January 1, 1986, a maximum of six (6) days of personal leave with pay will be granted regularly assigned Train Dispatchers, subject to the conditions enumerated below.

1. Train Dispatchers, regularly assigned as such on January 1st, who performed Train Dispatcher service on not less than 120 days in the preceding calendar year, will be allowed two (2) personal leave days, with pay at the rate of his/her regular assignment, in the current calendar year.

2. Train Dispatchers, regularly assigned as such on January 1st, who performed Train Dispatcher service on not less than 100 days in the preceding calendar year, and who have performed service with the Carrier on not less than 100 days in at least two (2) preceding calendar years, will be allowed three (3) personal leave days, with pay at the rate of his/her regular assignment, in the current calendar year.

3. Train Dispatchers, regularly assigned as such on January 1st, who performed Train Dispatcher service on not less than 100 days in the preceding calendar year, and who have performed service with the Carrier on not less than 100 days in at least eight (8) preceding calendar years, will be allowed four (4) personal leave days, with pay at the rate of his/her regular assignment, in the current calendar year.

4. Train Dispatchers, regularly assigned as such on January 1st, who performed Train Dispatcher service on not less than 100 days in the preceding calendar year, and who have performed service with the Carrier on not less than 100 days in at least seventeen (17) preceding calendar years, will be allowed five (5) personal leave days, with pay at the rate of his/her regular assignment, in the current calendar year.

5. Train Dispatchers, regularly assigned as such on January 1st, who performed Train Dispatcher service on not less than 100 days in the preceding calendar year, and who have performed service with the Carrier on not less than 100 days in at least twenty-five (25) preceding calendar years, will be allowed six (6) personal leave days, with pay at the rate of his/her regular assignment, in the current calendar year.

B. Subject personal leave days will not be accrued from one year to another.

C. No allowance will be made under this rule for any day on which the employee is entitled to compensation under any other rule or agreement.

D. Subject leave day allowance under two or more agreements held by different organizations on this Carrier shall not be combined to create dual benefits or allowances while employed in Train Dispatcher status.

E. Subject personal leave days may be taken on an employee's regularly assigned work day upon twenty-four (24) hours' advance notice to the proper Carrier Officer and may be taken only when consistent with the requirements of the Carrier's service.

F. This Agreement is effective August 1, 1986, and shall supersede the former Personal Leave Day Agreement of January 1, 1983.

FOR THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

General Chairman - ATDA - GTW

General Chairman - ATDA - DT&I

FOR THE GRAND TRUNK WESTERN RAILROAD COMPANY

J. F. Corcoran

Vice President
Personnel and Labor Relations

APPROVED:

W. A. Clifford
Vice President - ATDA

Date: July 11, 1986

Detroit, Michigan

738atda.ag4

AGREEMENT BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY
AND THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION

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It is agreed that all claims or grievances arising on and after August 1, 1986, shall be handled as follows:

"Time Limits For Time Claims and Grievances

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within sixty (60) calendar days from the date of the occurrence on which the claim or grievance is based. Should any such claims or grievance be disallowed, the Carrier shall, within sixty (60) calendar days from the date same is filed, notify the employee or his representative of the reasons for such disallowance. If not so notified, the claim or grievance shall be considered valid and settled accordingly, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

(b) If a disallowed claim or grievances is to be appealed, such appeal must be taken within sixty (60) calendar days from receipt of notice of disallowance, and the representative of the Carrier shall be notified within that time of the rejection of this decision. Failing

to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent, or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the sixty (60) calendar day period for either a decision or appeal, up to and including the Chief Officer of the Carrier designated for that purpose.

(c) The procedure outlined in paragraphs (a) and (b) pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken co each succeeding officer except in cases of appeal from the decision of the highest operating officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest officer shall be barred unless within nine (9) months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the nine (9) months' period herein referred to.

(d) A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the Claimant or Claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than sixty (60) calendar days prior to the filling thereof. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

(e) This rule recognizes the right of representatives of the organization, party hereto, to file and prosecute claims and grievances for and on behalf of the employees they represent.

(f) This rule shall not apply to request for leniency.

NOTE: With respect to all claims or grievances which arose or arise out of occurrences, prior to the effective date of this rule, such claims or grievances must be filed within sixty (60) calendar days after the effective date of this rule in the manner provided for in paragraph (a) hereof, and if not progressed pursuant to the provisions of paragraphs (b) and (c) of this rule the claims or grievances shall be barred. With

respect to claims or grievances filed prior to the effective date of this rule the claims or grievances must be ruled on or appealed as the case may be within sixty (60) calendar days after the effective date of this rule and if not thereafter progressed pursuant to paragraphs (b) and (c) of this rule the claims or grievances shall be barred, except that in the case of all claims or grievances on which the highest officer of the Carrier has ruled prior to the effective date of this rule, a period of nine (9) months will be allowed after the date of this rule for an appeal to be taken to the appropriate board of adjustment as provided in paragraph (c) before the claim or grievance is barred. This provision does not apply to claims or grievances already barred under existing agreements."

FOR THE EMPLOYEES:

L. DeYoung, General Chairman

W. A. Clifford, Vice President

Date: July 11, 1986

ATDA.GN

FOR THE GRAND TRUNK WESTERN RAILROAD:

J. F. Corcoran, Vice President-Personnel and Labor Relations

Carrier's Files: 7-12
7-48

AGREEMENT
BETWEEN THE
GRAND TRUNK WESTERN RAILROAD COMPANY
AND THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION

IT IS AGREED:

1. Effective October 5, 1986, the Memorandum of Agreement dated April 17, 1984, relative to pay for training student Train Dispatchers, is abrogated.

2. Effective October 5, 1986, Train Dispatchers who are assigned to train student Train Dispatchers or who are required to break-in extra or regular Train Dispatchers on positions will be allowed a payment of forty-five (45) minutes per tour of duty, at the pro-rata rate of their regular position.

3. Effective October 5, 1986, the daily rate of pay for student Train Dispatchers shall be eighty (80) per cent of the straight time daily rate of a trick Train Dispatcher position.

ACCEPTED BY:

General Chairman - A.T.D.A.

ACCEPTED BY:

E. M. Bouchard
Director, Labor Relations

APPROVED BY:

William A. Tiffany
Vice President - A.T.D.A.

Date: Sept 29, 1986

CN NORTH AMERICA

Grand Trunk Western Railroad - Central Vermont Railway - Duluth, Winnipeg & Pacific Railroad

January 29, 1993

Our File: 9000-17

Mr. N. J. Schmidt, General Chairman
American Train Dispatchers Association
16409 Whitehead
Linden, MI 48451

Dear Sir:

Reference is made to Article I - Wages, Section 2 - Equity Wage Adjustment of the April 30, 1991 National Mediation Agreement and to Letter No. 3 of the ATDA - GTW Agreement signed May 21, 1991 concerning Proposal No. 1 Parity Wage Adjustment of ATDA's June 1, 1988 Section 6 Notice.

This will confirm my commitment that the 4% equity adjustment increase provided in Section 2, Article I of the April 30, 1991 Agreement will be applied to GTW dispatchers covered by the May 21, 1991 Agreement. This 4% increase will be retroactive to May 1, 1991 and will be paid when determined at a future date.

Yours very truly,

Emerson Bouchard

Emerson Bouchard
Director of Labor Relations

Received Jan -1993

1333 Brewery Park Boulevard, Detroit, Michigan 48207-2699

AGREEMENT
BETWEEN THE
GRAND TRUNK WESTERN RAILROAD COMPANY
AND ITS EMPLOYEES
REPRESENTED BY THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION

ARTICLE I - WAGES

Section 1 - Lump Sum Payment

A lump sum payment of $3,500.00 shall be made to employees covered by this agreement who have an active employment relationship with the Grand Trunk Western Railroad Company under the agreement with the Organization signatory hereto on the date of this Agreement. This payment shall be made within thirty (30) days of the date this agreement is signed or by June 18, 1991 (provided the agreement is signed), whichever date is earlier.

Section 2 - General Wage Increase

Effective December 31, 1991, all hourly, daily and monthly rates of pay in effect shall be increased by 3%.

Section 3 - General Wage Increase

Effective December 31, 1992, all hourly daily and monthly rates of pay in effect shall be increased by 4%.

Section 4 - Lump Sum Payment

Employees will be paid a 3% lump sum payment effective December 31, 1993. Such lump sum will be paid to employees who have an active employment relationship with the company on December 31, 1993 and will be computed on compensation earned from January 1, 1993 thru December 31, 1993.

ARTICLE II - WORK RULES

Effective with the first day of the month following the ratification of this agreement, the following rule amendments shall become effective.

A. Work Week of Assigned Utility Dispatchers

The first sentence of Paragraph 1.(c) reading "Work Week for Assigned Utility Dispatchers will be Monday through Sunday" of the agreement dated March 30, 1978 (eff April 1, 1978) covering Assigned Utility Dispatchers is deleted and the following substituted therefor:

> "Work Week" for Assigned Utility Dispatchers will be five consecutive days per week with two rest days as determined by supervision. AUD positions will be bulletined when changes are made.

B. Special Sick Leave Reserve

(1) Paragraph 2(f) of the special sick leave reserve agreement dated July 11, 1986 is amended to provide that train dispatchers are credited with 60 days in the special sick leave reserve upon attaining 30 months seniority as train dispatcher.

ARTICLE III - 401 (k) PLAN

The Carrier will establish by September 1, 1991, an Employee Savings Plan designed and intended to operate in conformity with Section 401 (k) of the Internal Revenue Code, as amended. The provision of the Plan will conform to the principles contained in Attachment A to this document. Except for changes in the Plan mandated by subsequent change in the Internal Revenue Code, no additions or changes may be made in Attachment A except by mutual agreement of the parties. The parties to this Agreement will not serve nor progress, prior to the attrition of all protected employees, any notice or proposal for changing the specific provision of Attachment A hereto.

ARTICLE IV - HEALTH AND WELFARE

The parties will adopt the provisions of the national settlement on Health and Welfare issues.

The parties agree to adopt employee cost sharing provisions included in the national settlement to the extent that employee contributions shall equal but not exceed the year to year cost sharing provisions agreed to in the national agreement through 1994. Employee cost sharing will equal the dollar amount contributed under the

April 30, 1991 ATDA national agreement and will be recovered from the amount generated by the general wage increases effective December 31, 1991 and December 31, 1992 and the lump sum payment effective December 31, 1993. It is understood and agreed that the employee cost sharing provisions of Health and Welfare shall not be extended into 1995 except by agreement.

ARTICLE V - EFFECTIVE DATE OF AGREEMENT

Except as otherwise provided for herein, this Agreement shall become effective on the day this Agreement is signed.

ARTICLE VI - MORATORIUM

This Agreement is in full and final settlement of the Carrier's Notice of April 4, 1988 and the Organization's three notices dated May 17, 1988; June 1, 1988 and July 1, 1988.

All rules, practices and agreements in effect between the Grand Trunk Western Railroad and the Organization signatory hereto, unless specifically modified, changed or abrogated herein, will remain in effect until changed in accordance with the provisions of the Railway Labor Act, as amended. However, neither party signatory hereto may serve or progress any new notices prior to September 1, 1993 (not to become effective prior to January 1, 1994). In addition, except as provided in Letter No. 3, all other pending notices are withdrawn.

FOR THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

L. DeYoung
General Chairman

W. A. Clifford
Vice President

Date: May 21, 1991

FOR THE GRAND TRUNK WESTERN RAILROAD COMPANY

E. M. Bouchard
Director, Labor Relations

R. J. O'Brien
Assistant Director
Labor Relations

Date: _____

Grand Trunk Western Railroad Co.
1333 Brewery Park Blvd.
Detroit, MI 48207-2699

May 17, 1991

Letter No. 1

Mr. L. DeYoung, General Chairman
American Train Dispatchers Association
6883 Big Trail
Holly, MI 48442

Dear Sir:

This will confirm our understanding that the lump sum payments provided in the agreement of this date will not be used to offset, construct or increase guarantees in protective agreements or arrangements.

Please indicate your agreement by signing in the space provided below.

Yours very truly,

E. M. Bouchard
Director, Labor Relations

Agreed

L. DeYoung, General Chairman

W. A. Clifford, Vice President

Date: May 21, 1991

Grand Trunk Western Railroad Co.
1333 Brewery Park Blvd.
Detroit, MI 48207-2699

May 17, 1991
Letter No. 2

Mr. L. DeYoung, General Chairman
American Train Dispatchers Association
6883 Big Trail
Holly, MI 48442

Dear Sir:

This refers to Article I, Section 1 - Lump Sum Payment, of the agreement signed May 17, 1991 with your Organization and will confirm our understanding that this lump sum payment will be paid to each employee subject to this agreement who has an active employment relationship as of May 17, 1991.

It is further understood that employees who have retired or have been dismissed, suspended or on leave of absence between July 1, 1988 and May 13, 1991 will receive a pro-rated portion of the lump sum payment and $83.33 per month will be deducted from the $3500.00 lump sum payment for each month in which they did not perform compensated service from July 1, 1988 to December 31, 1991. Employees hired after July 1, 1988 will receive a pro-rated portion of the lump sum payment and will be compensated $83.33 per month for each month in which they perform compensated service from date of hire until December 31, 1991.

If the foregoing properly reflects your understanding, then so signify by signing in the space provided below.

Yours very truly,

E. M. Bouchard
Director, Labor Relations

Agreed:

L. DeYoung, General Chairman

W. A. Clifford, Vice President

Date: May 21, 1991

Grand Trunk Western Railroad Co.
1333 Brewery Park Blvd.
Detroit, MI 48207-2699

May 17, 1991

Letter No. 3

Mr. L. DeYoung, General Chairman
American Train Dispatcher Association
6883 Big Trail
Holly, MI 48442

Dear Sir:

This refers to the Organization's Proposal No. 1 Parity Wage Adjustment of ATDA's June 1, 1988 notice and paragraphs (a), (b) and (c) Rates Of Pay of Carrier's notice dated April 4, 1988 (9000-17).

This will confirm our understanding that these notices may be progressed within, but not beyond, the specific procedures for peacefully resolving disputes provided for in the Railway Labor Act, as amended.

Yours very truly,

E. M. Bouchard
Director, Labor Relations

Agreed:

L. DeYoung, General Chairman

W. A. Clifford, Vice President

Date: May 21, 1991

Grand Trunk Western Railroad Co.
1333 Brewery Park Blvd.
Detroit, MI 48207-2699

May 17, 1991

Letter No. 4

Mr. L. DeYoung, General Chairman
American Train Dispatchers Association
6883 Big Trail
Holly, MI 48442

Dear Sir:

This has reference to our discussion concerning the payment of a separation allowance to train dispatchers in the event Carrier elects to permanently abolish a position or positions.

This will confirm that, without prejudice to or establishing a precedent relative to Carrier's position that it has the right either to abolish positions or make severance offers, Carrier would in connection with this be willing to give consideration to a request from the union for a separation allowance amounting to $50,000.00 when a position is permanently abolished.

Please indicate your concurrence by signing in the space provided below.

Yours very truly,

E. M. Bouchard
Director, Labor Relations

Agreed:

L. DeYoung, General Chairman

W. A. Clifford, Vice President

Date: June 2, 1991

MODEL EMPLOYEE SAVINGS PLAN

The benefits from the Employee Savings Plan would be paid from a Trust Account dedicated to the Plan. The Plan is designed and intended to operate in conformity with Section 401(k) of the Internal Revenue Code.

PURPOSE

The Employee Savings Plan provides eligible employees a percentage of their pay to a tax deferred Savings-Investment account in preparation for retirement.

ELIGIBILITY

All U.S. employees in crafts which are signatories to this Plan are eligible to participate so long as they have completed at least six months of service. However, employees can only enroll in the Plan at one of the semi-annual enrollment periods which occur in March and September.

HOW THE PLAN WORKS

The basic operation of the Plan is:

- The member contributes into the Plan through regular payroll deductions at a specified percentage rate from 1 - 10%.
- Tax Withholding is not taken from these contributions.
- The contributions are divided between three investments.
- No taxes are paid on earnings from investments in the account until withdrawn, and then more favorable tax treatments may be available.

- Thus there are three types of additions which can be made to the member's account:

1. EMPLOYEE CONTRIBUTIONS -

The decision to contribute is completely voluntary. Contributions are made from earnings before Federal Income Taxes are taken out, from 1% of pay up to 10% of total salary.

2. IMMEDIATE TAX SAVINGS -

Federal Withholding Taxes that would have been paid on the money you contributed are instead deposited into the Plan Account. State and Local Income Taxes are also not paid on contributions in most cases.

3. TAX-DEFFERED EARNINGS -

No taxes are paid on any earnings on contributions until they are withdrawn. Because of this, investment earnings can grow without paying any current taxes.

INVESTMENT OPTIONS

The Plan would offer three options for investing. Members can select the single option or that combination of options that best suit their needs:

MONEY MARKET:

Scudder Cash Investment Trust is a managed portfolio of short-term securities which mature in not more than one year. Its dual objectives are to maintain the stability and liquidity of capital and to provide current income.

INCOME:

Scudder Income Fund seeks income from bonds and high-yielding common stocks with due consideration to the prudent investment of capital.

GROWTH:

Scudder Growth and Income Fund seeks long-term growth of capital, current income, and growth of income primarily from common stocks and securities convertible into common stocks.

Members may select the percentages of contributions to go into each of the investment options. One may choose to have a portion go into each of the three, two of the three, one of the three, or have it all go into one of the three. Contributions are to be divided in 25% multiples among the three investment options.

CHANGES IN MEMBER ACCOUNTS

Twice each year, in March and September, participants have the opportunity to:

- adjust the amount of contributions up or down
- change how contributions/fund balances are invested

Contributions may be suspended at any time. However, once suspended, contributions may not be resumed until the next account change date.

VESTING

All dollars in the member's account are vested immediately. Vesting means a guaranteed right to a benefit from the Plan. In other words, if the member ever leaves the company for any reason, he or she will automatically receive the full value of the account, including contributions. The tax savings, and all earnings. Accounts are valued as of the last trading day for each month's contributions.

TRANSFERS

If an employee transfers between two crafts covered by this Plan, participation can continue. If the transfer is

to a craft not covered by this Plan or to management, the account can receive no further contributions until return, retirement or employment termination.

WITHDRAWALS FOR ACTIVE EMPLOYEES

Withdrawals for active employees are generally not allowed. However, there can be a withdrawal without penalty under the following circumstances:

- termination of employment
- disability
- death
- retirement
- age 59 1/2
- financial hardship (as defined by current Federal Regulations for this and similar plans).

A Financial Hardship Withdrawal requires demonstration that funds are not available from another source and approval of the Plan administrator. All Financial Hardship Withdrawals must comply with regulations and interpretations established by the IRS and Congress.

LOAN PROVISIONS

There is even a way to receive part of one's account value without paying taxes. A member can borrow from his or her account without paying taxes. The minimum loan is $1,000. For all accounts, 50% of the account can be borrowed up to a maximum of $50,000.

All loans must be repaid with interest within five (5) years. Any outstanding loan balance must be repaid before a new loan can be made. Loans will have an interest rate equal to 1% more than the prime rate as established by the National Bank of Detroit at the time of the loan.

As the loan is repaid, all interest will be credited back into the member's own account.

Rules applying to accounts at time of withdrawal:

1. At time of withdrawal, the member has the option of receiving cash or shares in connection with

the three Scudder Investment Funds. In either form, the Federal Regulations governing this and other similar plans would enable the member to roll over the distribution from this Plan into an IRA account without paying taxes until later withdrawal.

2. If distribution takes place after retirement, the member is likely to be in a lower tax bracket than during the active career.

CONTRIBUTION LIMITATIONS

The Internal Revenue Service required that savings plans which permit employees to obtain these tax advantages meet rather complex tests which assure a fair mix of contributions from participants at all earnings levels. In order to maintain the proper balance, it may be necessary to limit the contributions made by the higher-paid participants by adjusting these contributions to within IRS limitations. The company will monitor these contributions month-by-month. If such an adjustment becomes necessary, those employees affected will be notified.

AGREEMENT
BETWEEN THE
GRAND TRUNK WESTERN RAILROAD INCORPORATED
AND ITS EMPLOYEES
REPRESENTED BY THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION

ARTICLE I - WAGES

Effective January 1, 1995, all hourly, daily and monthly rates of pay shall be increased by 3%.

ARTICLE II - WORK RULE

The following rule amendments shall become effective January 1, 1995.

A. Agreement "M", Carrier File 7-38, dated July 11, 1986 covering Personal Leave Days is cancelled and the following substituted therefor -

Personal Leave Days

1. A maximum of nine (9) days of personal leave with pay will be granted regularly assigned Train Dispatchers, subject to the conditions enumerated below.

(a) Train Dispatchers, regularly assigned as such on January 1st, who performed Train Dispatcher service on not less than 120 days in the preceding calendar year, will be allowed two (2) personal leave days, with pay at the rate of his/her regular assignment, in the current calendar year.

(b) Train Dispatchers, regularly assigned as such on January 1st, who performed Train Dispatcher service on not less than 100 days in the preceding calendar year, and who have performed service with the Carrier on not less than 100 days in at least two (2) preceding calendar years, will be allowed four (4) personal leave days, with pay

at the rate of his/her regular assignment, in the current calendar year.

(c) Train Dispatchers, regularly assigned as such on January 1st, who performed Train Dispatcher service on not less than 100 days in the preceding calendar year, and who have performed service with the Carrier on not less than 100 days in at least eight (8) preceding calendar years, will be allowed six (6) personal leave days, with pay at the rate of his/her regular assignment, in the current calendar year.

(d) Train Dispatchers, regularly assigned as such on January 1st, who performed Train Dispatcher service on not less than 100 days in the preceding calendar year, and who have performed service with the Carrier on not less than 100 days in at least seventeen (17) preceding calendar years, will be allowed seven (7) personal leave days, with pay at the rate of his/her regular assignment, in the current calendar year.

(e) Train Dispatchers, regularly assigned as such on January 1st, who performed Train Dispatcher service on not less than 100 days in the preceding calendar year, and who have performed service with the Carrier on not less than 100 days in at least twenty-five (25) preceding calendar years, will be allowed nine (9) personal leave days, with pay at the rate of his/her regular assignment, in the current calendar year.

2. Subject personal leave days will not be accrued from one year to another.

3. No allowance will be made under this rule for any day on which the employee is entitled to compensation under any other rule or agreement.

4. Subject leave day allowance under two or more agreements held by different organizations on this Carrier shall not be combined to create dual benefits or allowances while employed in Train Dispatcher status.

5. Subject personal leave days may be taken on an employee's regularly assigned work day upon twenty-four (24) hours' advance notice to the proper Carrier Officer and may be taken only when consistent with the requirements of the Carrier's service.

Gentlemen:

With reference to the 1995 $86.10 offset relating to the National Health and Welfare Plan, please be advised that, consistent with your respective agreements, arrangements are being made to deduct $7.175 per month in twelve equal payments from each employee's earnings in your craft commencing in the month of January and extending through December, 1995. Further, it is anticipated that the deduction will be made in the fourth week of each month.

Yours very truly,

R. J. O'Brien
Assistant Director,
Labor Relations

C: P. K. Geller
J. R. Nelson

B. ARTICLE 9 - Discipline, Etc., paragraph (a) is amended to read as follows:

> (a) A train dispatcher shall not be disciplined or dismissed without proper investigation as provided herein. Suspension pending such investigation shall not be deemed a violation of this principle. The investigation shall be fair and impartial. Such investigation shall be held within ten days from the date held from service or within twenty days from the date charged with the offense when not held from service. Such notice shall be in writing and shall clearly specify the charge. The train dispatcher shall have the right to be represented by a fellow train dispatcher employe of his choice or a duly accredited representative of the organization and he shall be given reasonable opportunity to secure the presence of necessary witnesses. The train dispatcher's representative shall be permitted to hear all evidence introduced into the record and shall have the right to examine all witnesses. Decision shall be rendered as promptly as possible but not later than thirty (30) days from the date of close of the investigation. A copy of the transcript of the investigation shall be furnished the train dispatcher or his representative upon request.

ARTICLE III - HEALTH AND WELFARE

The provisions of Article IV - Health and Welfare of the agreement signed May 21, 1991 are extended through the duration of this agreement.

With respect to employee cost sharing for 1995, the organization agrees to adopt employee cost sharing provisions included in the national settlement to the extent that employee contributions shall equal but not exceed the calendar year cost sharing provisions agreed to in such settlement through 1995. Employee cost sharing for 1995 will equal the dollar amount contributed under the national agreement and will be recovered from the increase effective January 1, 1995. It is understood and agreed that the employee cost sharing provisions of Health and Welfare in 1995 shall be spread over the year in twelve (12) equal payments. These employee cost sharing provisions shall not extend beyond December 31, 1995 except by agreement.

ARTICLE IV - MORATORIUM

All rules, practices and agreements in effect between the Grand Trunk Western Railroad Incorporated and the Organization, unless specifically modified, changed or abrogated herein, will remain in effect until changed in accordance with the provisions of the Railway Labor Act, as amended. However, neither party may serve or progress any new notices prior to September 1, 1995 (not to become effective prior to January 1, 1996). In addition, all other pending notices are withdrawn.

FOR THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

N. J. Schmidt
General Chairman

W. A. Clifford
Vice President

Date: Nov. 28, 1994

FOR THE GRAND TRUNK WESTERN RAILROAD INC.

E. M. Bouchard
Director Labor Relations

Date: 11/28/94

AGREEMENT
BETWEEN THE
GRAND TRUNK WESTERN RAILROAD INCORPORATED
AND ITS EMPLOYEES REPRESENTED BY THE
TRAIN DISPATCHER DEPARTMENT
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

ARTICLE I - WAGES

General Wage Increases

Effective January 1, 1996, all hourly, daily and monthly rates of pay shall be increased retroactive by 3%.

Effective January 1, 1997, all hourly, daily and monthly rates shall be increased by 3%.

ARTICLE II - POSITIONS AND/OR WORK MAY BE TRANSFERRED TO CANADIAN NATIONAL RAILWAY, AND CHANGES IN SCOPE/WORK RULES/PRACTICES

It is the intent and purpose of this agreement to provide for the orderly removal/transfer of work and/or positions and other changes in work rules/practices. In consideration for this, a lump sum payment in the amount of $7,000.00 shall be made to employees covered by this agreement who have an active employment relationship within Grand Trunk Western Railroad Incorporated (GTW) on the date of this agreement. This payment will be made

with forty-five (45) days of the company's receipt of advice of the ratification of this agreement. Anticipated number of positions eliminated pursuant to this Article II will not exceed fifteen (15) as indicated in side letter No. 1. Positions and or work transfers will be implemented on or before December 31, 1997. To the extent permitted by law not more than two (2) train dispatcher employees will be promoted from the rank of active train dispatcher employees to non-agreement status until twelve (12) months following implementation of the work and position transfers indicated in Side Letter No. 1.

Section 1 - Employee Protection

In the event reductions of train dispatcher positions exceeds the fifteen (15) as indicated in side letter No. 1, an additional number of train dispatcher employees equal to the number of position reductions will qualify for the options in Section 2, Voluntary Severance Allowance and Section 3, Voluntary Furlough Allowance.

Section 2 - Voluntary Separation Allowance

(1) The GTW will offer a voluntary separation allowance in the amount of $60,000 to not less than the number of affected protected dispatcher employees which is equal to the number of dispatcher positions (or their equivalent) eliminated and abolished pursuant to this Article II. This voluntary separation will be offered when dispatcher positions are abolished pursuant to this Article II. Protected employees who are in either active or furloughed dispatcher status on the date an

abolishment notice is issued and continue to remain in active or furloughed dispatcher status until the date positions are abolished are eligible to apply for this voluntary separation allowance.

(2) In the event that a greater number of protected employees request this voluntary separation allowance than the number offered, voluntary separation allowances will be given to the senior employees making application therefor.

(3) If an employee accepts a voluntary separation allowance under this agreement, twenty-four (24) months' union dues will be deducted from the separation payment.

(4) An employee who accepts a voluntary separation allowance will resign from the GTW and will be entitled to earned vacation and sick leave compensation in accordance with the working agreement but will relinquish all employment rights under the applicable working agreement and all other employee protective conditions which may be in effect.

Section 3 - Voluntary Furlough Allowance

(1) The GTW will offer protected employees the option to elect voluntary furlough status. This option will be offered to not less than the number of protected dispatcher employees which is equal to the number of GTW dispatcher positions abolished pursuant to this agreement, less the number of employees who accept the voluntary

separation allowance provided in Section 2. Protected employees who were in either active or furloughed dispatcher status on the date an abolishment notice is issued and continue to remain in active or furloughed status until the date positions are abolished are eligible to apply for this voluntary furlough allowance.

(2) An employee who elects a voluntary furlough status subject to recall to service will receive a monthly furlough allowance equivalent to seventy-five percent (75%) of the employee's average monthly earnings computed as follows: Such employee's monthly furlough allowance shall be determined by reducing by twenty-five percent (25%) the total compensation received by the employee, total compensation prior to twenty-five percent (25%) reduction shall not exceed $65,000.00, (including protection pay and compensation earned while in dispatcher status but excluding time claim and lump sum payments) during the last twelve (12) months (not necessarily continuous) in which he or she performed dispatcher service immediately preceding the date of voluntary furlough status and dividing the total by twelve. No other payments will be made during the time an employee is receiving this voluntary furlough allowance. This voluntary furlough allowance will not be subject to increases unless changed or modified in accordance with the Railway Labor Act. An employee is eligible to receive the seventy-five percent (75%) voluntary furlough allowance until recall to service, filing for disability annuity under the Railroad

Retirement Act, first eligible for an unreduced annuity under the Railroad Retirement Act or becoming deceased, whichever occurs first.

(3) An employee may elect a voluntary furlough status not subject to recall to service and receive a monthly furlough allowance equivalent to sixty percent (60%) of the employee's average monthly earnings computed as follows: Such employee's monthly furlough allowance shall be determined by reducing by forty percent (40%) the total compensation received by the employee total compensation prior to forty percent (40%) reduction shall not exceed $65,000.00, (including protection pay and compensation earned while in dispatcher status but excluding time claim and lump sun payments) during the last twelve (12) months (not necessarily continuous) in which he or she performed dispatcher services immediately preceding the date of voluntary furlough status and dividing the total by twelve. No other payments will be made during the time an employee is receiving this voluntary furlough allowance. The voluntary furlough allowance will not be subject to wage increases and will terminate seven (7) years from the date of furlough or when an employee is first eligible for an unreduced annuity under the Railroad Retirement Act, files for a disability annuity under the Railroad Retirement Act, or is deceased, whichever occurs first.

(4) In the event that a greater number of employees request a voluntary furlough status than the number offered, voluntary furlough status will be given to the senior employees making application therefor.

(5) While receiving a voluntary furlough allowance, an employee will be considered actively employed for the purpose of health, welfare, dental and 401(k) plan benefits under the provisions of the BLE Dispatcher Department working agreement and the Company will withhold and make payments to the Railroad Retirement Board from the voluntary furlough allowance in the same manner as from active employees to the full extent required or permitted by law. Applicable cost sharing contributions for health, welfare and dental benefits will be deducted from voluntary furlough allowances, unless changed or modified in accordance with the Railway Labor Act. Within thirty (30) days from the date an employee is advised of an increase in such cost sharing contributions, he or she may return to active service and exercise seniority consistent with fitness and ability and, if one or more employees return to active service, the company will offer an equivalent number of voluntary separation or voluntary furlough options to other active dispatcher employees. An employee who returns from voluntary furlough status because of an increase in cost sharing contributions for health, welfare and dental plan benefits, will not be eligible for future voluntary furlough status unless no junior eligible employee applies for an advertised voluntary furlough status.

(6) While receiving a voluntary furlough allowance, an employee will be paid weekly to the direct deposit account he or she designates and will continue to remain subject to the Union Shop Agreement and must authorize and continue to maintain payroll deduction in the amount necessary to pay periodic union dues to the organization.

(7) Employees in voluntary furlough status will only be recalled to service when the number of active dispatchers is less than twenty-one (21) and will only be recalled to fill a permanent vacancy or a known vacancy of thirty (30) days or more that is not filled by the normal bulletining process. Such vacancies will be filled by voluntary furlough status employees in seniority order and return to service will be mandatory for the junior employee. Should the company develop a need for additional dispatcher employees, the company may by fourteen (14) days written notice recall an employee receiving a voluntary furlough allowance. Recalls to active service will be made in inverse seniority order consistent with sufficient fitness and ability. In the event an employee on voluntary furlough is recalled under the provisions as stated above, such employee shall have the first option to return to voluntary furlough status in seniority order when forces are reduced. If such employee has sufficient seniority to continue to hold a position, he or she may elect not to return to voluntary furlough status and the carrier shall offer the equivalent number of voluntary furlough allowances in seniority order. Within fourteen (14)

days of recall, the employee must either return to service thereby terminating the voluntary furlough allowance or resign from the service of the company terminating his or her entitlement to voluntary furlough allowance and all employment, seniority and protective rights. Termination and suspension of such entitlements and protective rights shall be on a one-to-one basis for recall to positions, only one voluntary furloughed employee will have his or her entitlements and protective rights suspended for each position offered. Upon date of return, an employee who is recalled to service may exercise seniority rights, consistent with fitness and ability. Notwithstanding the above, dispatcher employees in voluntary furlough status subject to recall must maintain their qualification for service under applicable company policies, laws, regulations and fulfill physical examinations requirements. Employee in voluntary furlough status will be eligible to exempt themselves from recall to service in each calendar year for the amount of time equivalent to their vacation entitlement providing advance notification of non-availability is given to the designated carrier officer prior to recall to service.

(8) The carrier may establish a Voluntary Furlough Call Back List (VCBL) for filling emergency vacancies. This list will include all employees who desire to be called for emergency service who will be required to return to service within 24 hours. Those choosing to elect to have

their name placed on such a list will be required to remain on such for a minimum of 7 days and may request to be added or removed from such list at anytime provided they meet the 7 day requirement. Those employees who remove themselves from the VCBL may not return to the VCBL for a minimum of 7 days. Those employees on the VCBL will only be considered available, after the established calling procedure in Attachment 'A' has been exhausted. It is understood and agreed that dispatchers on VFA status who are listed on a VCBL will be called only at the carrier's discretion. When filling train dispatchers' vacancies from the VCBL employees will continue to receive the VFA and employees called from the VCBL will additionally be compensated for working in accordance with the Train Dispatchers Agreement.

(9) An employee in voluntary furlough status must keep his or her current address and telephone number on file with the proper company officer (Director Human Resources) and Dispatcher Department General Chairman. Failure to report, in writing, a change of address and/or telephone number within fifteen (15) days following such change, may result in forfeiture of seniority, eligibility for voluntary furlough allowance and all employment and protective rights. The Director Human Resources and General Chairman will sign and return one copy of the change in address and/or telephone number to the employee as a receipt.

(10) An employee receiving a voluntary furlough allowance is not eligible for compensation for holiday pay, personal leave days, bereavement leave, sick leave and jury duty. Prior to assuming voluntary furlough status, an employee will exhaust all vacation due in the current year earned by service in the prior year. No compensation for vacation time will be allowed to an employee who is in voluntary furlough status. Vacation earned in the year in which voluntary furlough status is assumed will be placed in a bank to be used in the year in which the employee returns to active service. An employee entering into retirement from voluntary furlough status or an employee who becomes deceased while in voluntary furlough status will receive the banked vacation compensation. All vacation compensation paid in lieu of vacation under this paragraph will not be subject to increase and will be paid at the rate of the position last worked. In qualifying for vacation and personal leave in the year recalled, employees who are recalled to service and do not have banked vacation time will be considered as having rendered compensated service on each date they receive compensation while in voluntary furlough status. At the time an employee assumes voluntary furlough status all unused sick leave will be placed in the special leave reserve to be drawn upon in the event he or she is recalled to service. Additionally, an employee who dies or retires while in voluntary furloughed status will be entitled to earned sick leave compensation in accordance with the working agreement. Also, if an employee returns to service in a subsequent year, an allowance of thirteen (13) working days sick leave will be granted in the year of return to service.

(11)Other non-railroad employment while in voluntary furlough status is permissible and there shall be no offset for non-railroad outside earnings.

(12)An employee who requests and receives voluntary furlough status ceases to be eligible for the voluntary separation allowance provided in Section 2 herein unless recalled and affected by a subsequent transaction.

Section 4 - Relief of Chief Train Dispatcher

The January 9, 1973 Agreement covering the filling of the Chief Train Dispatcher position is canceled effective May 10, 1996. However, in the event that a dispatcher employee represented by the Train Dispatching Department/Brotherhood of Locomotive Engineers is used to work in the capacity of Chief Train Dispatcher, such employee will be compensated at the current Chief Dispatcher rate of pay which is $231.18 per day subject to the 3% wage increase effective January 1, 1997 and subsequent future ATDA wage increases.

Section 5 - Change Train Dispatcher Calling Practice, Related Administrative Functions and Scope of Agreement

The practice of train dispatcher employees calling train dispatchers along with related administrative functions is discontinued effective with the date that the fifteen (15) position options under Article II Sections 2 and 3 are implemented and may be assigned to other employees as carrier determines.

Section 6 - General Conditions

(1) In the event that the company and the organization are unable to resolve any dispute or controversy with respect to the interpretation, application or enforcement of any provisions of this Article, it will be adjudicated by a special board of adjustment, paid for by the company.

(2) In the event that dispatchers' work transferred to the CN pursuant to this agreement is returned to the GTW such work will be recognized as that coming within the scope of the Train Dispatchers' Agreement.

ARTICLE III - HEALTH AND WELFARE

The provisions of Article III - HEALTH AND WELFARE of the agreement dated November 28, 1994 are extended through the duration of this agreement.

With respect to employee cost sharing for 1996 and 1997, the organization agrees to adopt employee cost sharing provisions included in the national settlement to the extent that employee contributions shall equal but not exceed the calendar year cost sharing provisions agreed to in such settlement through 1997. Employee cost sharing for 1996 and 1997 will equal the dollar amount contributed under the national agreement and will be recovered from the increase effective January 1, 1996 and January 1, 1997. It is understood and agreed that the employee cost sharing provisions of Health

and Welfare in each of these years shall be spread over the year in six (6) equal monthly payments for the year 1996 and twelve (12) equal monthly payments for the year 1997. These employee cost sharing provisions shall not extend beyond December 31, 1997 except by agreement.

ARTICLE IV - SAVINGS CLAUSE

All rules, agreements, provisions, conditions or practices, however established, which may conflict with this Agreement are superseded by the provisions of this Agreement. This Agreement is without precedent or prejudice to the position of either party hereto concerning similar or dissimilar issues and will not be referred to by either party in any dispute or grievance except as provided in Article II, Section 6(2).

ARTICLE V - MORATORIUM

This agreement, if approved by the Train Dispatcher Department President, is in full and final settlement of the Organization's Section 6 Notice dated November 26, 1995 and the Carrier's notice dated September 20, 1995. All rules, practices and agreements in effect between the Grand Trunk Western Railroad Incorporated and the Organization, unless specifically modified, changed or abrogated herein, will remain in effect until changed in accordance

All rules, practices and agreements in effect between the Grand Trunk Western Railroad Incorporated and the Organization, unless specifically modified, changed or abrogated herein, will remain in effect until changed in accordance with the provisions of the Railway Labor Act, as amended. However, neither party may serve or progress any new notices prior to September 1, 1997 (not to become effective prior to January 1, 1998). In addition, all other pending notices are withdrawn.

Signed at Detroit, Michigan this 24th day of June, 1996.

FOR THE TRAIN DISPATCHER DEPARTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

N. J. Schmidt
General Chairman

FOR THE GRAND TRUNK WESTERN RAILROAD INCORPORATED

J. P. Vast-Binder
Director Human Resources

M. J. Kovacs
Manager Labor Relations

APPROVED:

W. A. Clifford
Vice President

CHIEF DISPATCHER CIRCULAR NO. 3 ATTACHMENT 'A'

NEW CALLING PROCEDURE AT A-2': [illegible] TO TAKE EFFECT:
0001 FEBRUARY 01, 1994

ALL CONCERNED, ARRANGE TO FAMILIARIZE YOURSELVES AND CALL ACCORDINGLY.

R.T.BIGGERSTAFF
CHIEF DISPR.

TAKING EFFECT JAN 1 1994

R.T.BIGGERSTAFF
CHIEF DISPR.

W.J. SCHMIDT
A.F.B.A. GEN. CHAIRMAN

DATE

CALLING PROCEDURE

FOLLOWING IS CALLING PROCEDURE TO BE FOLLOWED AFTER ADDS ARE PLACED ON BOARD PER ADD AGREEMENT..

1) RESTED QUALIFIED ADD IN ORDER OF THEIR PLACEMENT ON THE ADD BOARD...
NOTE: ADD'S WILL BE ALLOWED TO HAVE A CHOICE OF POSITIONS BEGINNING WITH 1ST OUT ADD. HOWEVER, AFTER STEP 3 OF THE CALLING PROCEDURE HAS BEEN EXHAUSTED: THEN ADD'S MAY BE ASSIGNED AS REQUIRED BY THE CARRIER.
ie: TWO POSITIONS OPEN: 0800 PAC, 0800 TD1. TWO ADDS RESTED, 1ST ADD CHOOSES'S'TD1, 2ND RESTED ADD NOT QUALIFIED ON PAC. STEP 2 IS IMPLEMENTED AND NO RESTED DISPATCHER IS WILLING TO WORK THE PAC POSITION. 3RD 01 CAN BE ASSIGNED TO THE PAC POSITION AND 2ND ADD WILL PROTECT THE TD1 POSITION.

2) RESTED QUALIFIED DISPATCHERS IN SENIORITY ORDER IN OBSERVANCE OF THEIR REST DAYS AND PROVIDED THEY CAN PROTECT THEIR OWN ASSIGNMENTS..

3) NON-RRS-SVC DOUBLE TO BE CALLED IN SENIORITY ORDER. AT PUNITIVE RATE.. DOUBLE WOULD BE EXPECTED TO PROTECT HIS/HER SCHEDULED ASSIGNMENT.

4) RESTED DISPATCHERS IN OBSERVANCE OF THEIR REST DAYS, NOT UNABLE TO PROTECT THEIR OWN ASSIGNMENT (TPOW)

5) DIVERT QUALIFIED DISPATCHER IN SENIORITY ORDER PER AGREEMENT DATED JULY 30, 1992 (FORCE JUNIOR QUALIFIED PERSON)
NOTE: PER AGREEMENT DIVERSIONS ARE TO BE MADE ONLY TO AVOID HOURS OF SERVICE VIOLATIONS OR BECAUSE OF SOMEONE NOT BEING QUALIFIED. THEY ARE NOT TO BE MADE SIMPLY TO ALLOW PEOPLE TO PICK AND CHOOS: THE POSITIONS THEY WANT TO WORK.

6) VACANCIES CREATED BY DIVERSIONS TO BE FILLED PER CALLING PROCEDURE.. HOWEVER THE PERSON/S WHO REFUSED THE ORIGINAL VACANCY WOULD BE CALLED LAST AFTER ALL OTHERS HAVE BEEN ASKED IN THE CALLING PROCEDURE..

7) SPLIT SHIFTS 12 @ 12 ON NON-RRS-SVC POSITIONS

8) CALLS OFF VACATION LIST, AND REST DAYS FOLLOWING VACATION. THIS AT PUNITIVE RATE PLUS VACATION PAY..

9) SPLIT HRS OF SERVICE POSITIONS 12 @ 12...

10) BLANK POSITION IN ORDER OF PAC-A2-TAC

11) DOUBLE ON HOURS OF SERVICE POSITIONS...

R.T.BIGGERSTAFF
CHIEF DISPR...

** TOTAL PAGE.001 **

CN NORTH AMERICA

Grand Trunk Western Railroad Incorporated

Duluth, Winnipeg & Pacific Railway Company

June 24, 1996
Our Files: 8000-685
9000-31
Letter No. 1

Mr. N. J. Schmidt, General Chairman
American Train Dispatchers Association
16409 Whitehead
Linden, MI 48451

Dear Sir:

Article II of this agreement covers, among other things, voluntary furlough status allowances, transfer of positions and/or work to the Canadian National Railway and changes in scope rule/work rules/practices. During negotiations you requested the number of the voluntary furlough allowances as well as a description of other anticipated plans which are shown on the attached list.

In agreeing to provide this list it was stressed with respect to voluntary furlough allowances and reduction of auxiliary utility dispatcher (AUD) positions that, although it represents the best information current planning permits, it may not fully correspond to the actual numbers in view of service requirements.

Yours very truly,

J. P. Vast-Binder
Director Human Resources

AGREED:

N. J. Schmidt, General Chairman

Date: 6/27/96

1333 Brewery Park Boulevard, Detroit, Michigan 48207-2699

CURRENTLY ANTICIPATED JOB REDUCTIONS PURSUANT TO ARTICLE II OF THE JUNE 24, 1996 AGREEMENT

Positions	***No. of Positions***
Power Coordinator Positions	4
Train Assistant Chief Positions	4
Train Dispatcher Desk Positions	4
Auxiliary Utility Dispatcher Positions	3

CN NORTH AMERICA

Grand Trunk Western Railroad Incorporated

Duluth, Winnipeg & Pacific Railway Company

June 24, 1996

Our Files: 8000-685
9000-31

Letter No. 2

Mr. N. J. Schmidt, General Chairman
American Train Dispatchers Association
16409 Whitehead
Linden, MI 48451

Dear Sir:

This will confirm our understanding that the lump sum payment provided in the agreement of this date will not be used to offset, construct or increase guarantees in protective agreements or arrangements. Employees are entitled to the $7,000.00 lump sum payment if they are in active dispatcher service on June 24, 1996 which includes those furloughed or on leave of absence such as sick, personal or injury leave on June 24, 1996. There shall be no duplication of this lump sum payment by reason of employment under an agreement with another organization.

Please indicate your agreement by signing in the space provided below.

Yours very truly,

J. P. Vast-Binder
Director Human Resources

AGREED:

N. J. Schmidt, General Chairman

1333 Brewery Park Boulevard, Detroit, Michigan 48207-2699

bleist3

CN NORTH AMERICA

Grand Trunk Western Railroad Incorporated

Duluth, Winnipeg & Pacific Railway Company

June 24, 1996

Our Files: 8000-685
9000-31

Letter No. 3

Mr. N. J. Schmidt, General Chairman
American Train Dispatchers Association
16409 Whitehead
Linden, MI 48451

Dear Sir:

Reference is made to the changes set forth in of Article II of our agreement dated June 24, 1996.

This will confirm that the accord and understandings reached in connection with the above referred to Article were made without precedent or prejudice to existing agreement provisions of rights of either party and will not be referred to by either party in the handling of similar or dissimilar issues, claims or grievances.

If the foregoing properly reflects your understanding in connection with the above matters, please so signify in the space provided below.

Yours very truly.

J. P. Vast-Binder
Director Human Resources

AGREED:

N. J. Schmidt - General Chairman

1333 Brewery Park Boulevard, Detroit, Michigan 48207-2699

bielet7

CN NORTH AMERICA

Grand Trunk Western Railroad Incorporated

Duluth, Winnipeg & Pacific Railway Company

June 24, 1996

Our Files: 8000-685
9000-31

Letter No. 4

Mr. N. J. Schmidt, General Chairman
American Train Dispatchers Association
16409 Whitehead
Linden, MI 48451

Dear Sir:

This will confirm our understanding with respect to Article I of the Memorandum of Agreement between the Train Dispatchers Department, Brotherhood of Locomotive Engineers and the Grand Trunk Western Railroad Incorporated dated June 24, 1996.

Within ninety (90) days of the date this agreement is ratified, the parties will meet to discuss the introduction of an incentive compensation program which would be intended to provide periodic bonuses based upon productivity gains of the company. If such an incentive compensation plan is agreed upon, any such agreement:

1. Would be reached prior to December 31, 1996,

2. Would measure productivity gains and potentially pay bonuses for the year 1997,

3. Would pay or not pay such bonuses according to whether the CN annual incentive plan paid an annual incentive payment to the company's chief executive officer for 1997, and

4. Any additional compensation paid under such a plan would be considered as an alternative to the 3% 1997 general wage increase defined in Article I of the agreement.

1333 Brewery Park Boulevard, Detroit, Michigan 48207-2699

If no agreement is reached with respect to an incentive compensation plan by December 31, 1996, the 3% general wage increase defined in Article I will be implemented according to the agreement.

Yours very truly,

J. P. Vast-Binder
Director Human Resources

Agreed:

N.J. Schmidt - General Chairman

Date: 6/24/96

CN NORTH AMERICA

Grand Trunk Western Railroad Incorporated

Duluth, Winnipeg & Pacific Railway Company

June 19, 1996

Mr. N. J. Schmidt, General Chairman
Brotherhood of Locomotive Engineers -
Train Dispatchers Department
16409 Whitehead
Linden, MI 48451

Dear Sir:

This has reference to our discussions concerning the below listed time claims, as well as all other identical claims for dates up to and including June 19, 1996, covering alleged performance of yardmaster work by dispatchers and will confirm that they were fully and finally disposed by the Organization withdrawing them.

Carrier Files:

8390-4-167	8390-4-172
8390-4-168	8390-4-173
8390-4-169	8390-4-174
8390-4-170	8390-4-175
8390-4-171	

It was further understood and agreed that the withdrawal stipulated herein is without precedent or prejudice to either party's position and will not be referred to by either party in the handling of similar or dissimilar claims, cases, issues or disputes.

Yours very truly,

M. J. Kovacs
Senior Manager Labor Relations

Accord:

N. J. Schmidt - General Chairman

Date: 6/24/96

1333 Brewery Park Boulevard, Detroit, Michigan 48207-2699

CN NORTH AMERICA

Grand Trunk Western Railroad Incorporated | Duluth, Winnipeg & Pacific Railway Company

June 19, 1996
Our File: 8390-4-166

Mr. N. J. Schmidt, General Chairman
Brotherhood of Locomotive Engineers -
Train Dispatchers Department
16409 Whitehead
Linden, MI 48451

Dear Sir:

This has reference to our discussions concerning the continuing time claims in Carrier File 8390-4-166 for alleged scope rule violation on the basis of the transfer of work between GTW M.P. 332.1 and GTW M.P. 334.2 to the CN Railway and is in full and final disposition of this issue by allowing payment in the amount of $3,000.00 to each employee (except G. W. Snyder) whose name appears on the 1996 GTW Train Dispatchers' Seniority Roster dated January 1, 1996.

It was further understood and agreed that the payment stipulated herein is without precedent or prejudice to either party's position and will not be referred to by either party in the handling of similar or dissimilar claims, cases, issues or disputes.

Yours very truly,

M. J. Kovacs

M. J. Kovacs
Senior Manager Labor Relations

Accord:

N. J. Schmidt - General Chairman

Date: 6/21/96

8390166.doc

1333 Brewery Park Boulevard, Detroit, Michigan 48207-2699

CN NORTH AMERICA

Grand Trunk Western Railroad Incorporated

Duluth, Winnipeg & Pacific Railway Company

June 19, 1996

Our Files: 8000-685
8000-31

Mr. N. J. Schmidt, General Chairman
Brotherhood of Locomotive Engineers -
Train Dispatchers Department
16409 Whitehead
Linden, MI 48451

Dear Sir:

This will confirm our understanding that the Agreement dated June 24, 1996 is subject to further review and approval of the president of the Train Dispatcher Department of the Brotherhood of Locomotive Engineers or his designate.

This will also confirm that the parties will meet and finalize formal approval of this June 24, 1996 Agreement on June 24, 1996.

It is understood and agreed that in the event the parties' agreement is subsequently rejected, all terms and conditions contained therein are null and void.

Yours very truly,

J. P. Vast-Binder
Director Human Resources

Agreed:

N. J. Schmidt - General Chairman

Date: 6/24/96

1333 Brewery Park Boulevard, Detroit, Michigan 48207-2699

CN NORTH AMERICA

August 2, 1996

Our Files: 8000-685 & 9000-31

Mr. N. J. Schmidt, General Chairman
Brotherhood of Locomotive Engineers -
Train Dispatchers Department
16409 Whitehead
Linden, MI 48451

Dear Sir:

Enclosed for your signature are two copies of the agreed upon questions and answers applicable to the June 24, 1996 Agreement between the Grand Trunk Western Railroad Incorporated and the Train Dispatchers Department of the Brotherhood of Locomotive Engineers.

If you are in accord with the questions and answers, please sign and return one copy of the document to me.

Yours very truly,

M. J. Kovacs

M. J. Kovacs
Senior Manager Labor Relations

Enclosure

NJS-enc.doc

Questions & Answers

GTW/TRAIN DISPATCHER DEPARTMENT-BLE

JUNE 24, 1996 AGREEMENT

This has reference to the agreement between the Grand Trunk Western Railroad Incorporated and its employees represented by the Train Dispatcher Department/BLE signed June 24, 1996. Prior to signing the agreement the parties recognized the need to clarify certain of its provisions and agreed to do so by providing the following agreed-upon Questions & Answers:

Question No. 1 - Who is considered to be a protected train dispatcher employee and covered by the terms and conditions of Article II?

Answer No. 1 - Train dispatcher employees with a seniority date on or before June 24, 1996.

Question No. 2 - Under Article II, Section 3, paragraph 7, what company policies, laws, regulations and physical examination requirements necessary to maintain qualification are applicable to dispatcher employees in voluntary furlough status?

Answer No. 2 - Company policies, laws, regulations and physical examination requirements applied to dispatcher employees in voluntary

furlough status will not exceed those applied to dispatcher employees in active service.

Question No. 3 - How will dispatcher employees in voluntary furlough status be notified of a scheduled physical examination?

Answer No. 3 - The employees will be notified in writing at least fourteen (14) days prior to the date of scheduled physical examination.

Question No. 4 - Will dispatcher employees who assume voluntary furlough status be required to exercise their seniority held in other crafts?

Answer No. 4 - No.

Question No. 5 - Will dispatcher employees who assume voluntary furlough status be recalled and required to return to a work location other than the location from which they were furloughed?

Answer No. 5 - No, unless the entire dispatch office is moved to another location.

Question No. 6 - How will dispatcher employees be notified of voluntary separation and furlough options?

Answer No. 6 - Voluntary separation and furlough options will be offered by bulletin at least thirty (30) days prior to the effective date.

Question No. 7 - Who will be recalled to fill a permanent vacancy or a known vacancy of thirty (30) days or more that is not filled by the normal bidding process?

Answer No. 7 - Such vacancies will be filled by recalling voluntary furloughed employees in reverse seniority order.

Question No. 8 - Should a desk be abolished subsequent to abolishment of the initial fifteen 15) positions indicated in Side Letter No. 1, what number of voluntary furlough and severance options must be offered?

Answer No. 8 - The company must offer five (5) voluntary furlough or severance options.

For The Train Dispatcher Department of the Brotherhood of Locomotive	For The Grand Trunk Western Railroad Incorporated
N. J. Schimdt General Chairman	J. P. Vast-Binder Director Human Resources
Date: 8/8/96	Date: 8-2-96

CN NORTH AMERICA

Inter-departmental Correspondence

GTW A.T.D.A. AGREEMENT DATE April 5, 1993

GTW AGREES TO TRAIN AND USE A TRAIN DISPATCHER TO FILL VACANCIES ON MANAGER OF POWER DISTRIBUTION'S POSITION BASED ON FOLLOWING CONDITIONS:

1) COMPANY TO HAVE FULL RIGHT OF SELECTION FROM INTERESTED A.T.D.A. MEMBERS.

2) VACANCIES TO BE FILLED STRICTLY AT COMPANY'S DISCRETION AND NOT ON A "HAVE TO BASIS". PROBABLY WOULD ONLY FILL WEEK OR LONGER VACANCIES AND EVEN THEN, ONLY AT CARRIER'S OPTION.

3) THIS AGREEMENT OR DECISION TO FILL SELECTED VACANCIES MAY BE TERMINATED BY CARRIER AT ANY TIME WITHOUT ADVANCE NOTICE.

4) PAY RATE TO BE CONSISTENT WITH CURRENT MGR. OF POWER DISTRIBUTION'S RATE OF PAY.

J. S. YEAGER, GEN. SUPT. TRANS.

N. J. SCHMIDT, GEN. CHR.ATDA

J. R. HURD, CHIEF DISPATCHER

CANADIAN NATIONAL RAILWAY
2800 LIVERNOIS, SUITE 300
PO BOX 5025
TROY, MI 48007-5025

MARILYN J. KOVACS
SENIOR MANAGER LABOR RELATIONS

PHONE (248) 740-6211
FAX (248) 740-6213

GRAND TRUNK WESTERN RAILROAD INCORPORATED

DULUTH, WINNIPEG & PACIFIC RAILWAY COMPANY

October 6, 1999

File: 8000-691

Mr. W. A. Clifford, President
Brotherhood of Locomotive Engineers
American Train Dispatchers Dept.
1370 Ontario St., Suite 1040
Cleveland, OH 44113

Dear Mr. Clifford:

Please find enclosed a signed copy of the September 27, 1999 agreement between the Grand Trunk Western Railroad Incorporated and the Brotherhood of Locomotive Engineers.

Very truly yours,

M. J. Kovacs
Senior Manager Labor Relations

cc: J. W. Parker VP

w:\hr\kovacs\wac1069

AGREEMENT

between the

GRAND TRUNK WESTERN RAILROAD INCORPORATED

and its employees

represented by the

TRAIN DISPATCHER DEPARTMENT

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

ARTICLE I - WAGES

Section 1 - Signing Bonus

A signing bonus in the amount of $1500.00 shall be made to employees covered by this agreement who have an active employment relationship with the Grand Trunk Railroad Incorporated under the agreement with the organization.

Section 2 - General Wage Increase

Effective January 1, 1998, all daily and hourly rates of pay shall be increased retroactively by 3%.

Section 3 - General Wage Increase

Effective January 1, 1999, all daily and hourly rates of pay shall be increased retroactively by 3%.

Section 4 - General Wage Increase

Effective January 1, 2000, all daily and hourly rates of pay shall be increased by 3%.

Section 5 - Eligibility and Payment

The signing bonus provided for in Section 1 shall be payable only to employees who have an active employment relationship with the company on the date of this agreement. Having an active employment relationship under Section 1, includes employees who are furloughed (other than those in voluntary furlough status) or those on leave of absence such as sick, personal or injury leave, unless they have applied for a disability annuity as of the date of this agreement and are subsequently granted such annuity.

The general wage increases provided in this Article I shall be payable only to employees who have an active employment relationship with the company or to employees who have retired or died subsequent to January 1, 1998.

This signing bonus and retroactive payments will be made within sixty (60) days of the date the company receives written advice of the ratification of this agreement.

ARTICLE II - HEALTH AND WELFARE

The parties will adopt the provisions of the national settlement dated September 12, 1996 covering health and welfare issues, including the terms and conditions on eligibility for benefit coverage for dental care, vision care and health care benefits through the duration of this agreement.

With respect to employee cost sharing for 1998, 1999 and 2000, the parties agree to adopt employee cost sharing provisions included in the national settlement to the extent that employee contributions shall equal but not exceed the calendar year cost sharing provisions agreed to

in such settlement through 2000. Employee cost sharing for 1998, 1999, and 2000 will equal the dollar amount contributed under the national agreement. The employee cost sharing contribution for health and welfare is $150.80 in the year 1998-1999 and will be deducted from the retroactive wage increase effective January 1, 1998. If an employee cost sharing contribution for Health and Welfare is applicable for the years 1999 and 2000, the employee contributions shall be spread over the years in equal payments to the extent practicable. Employee cost sharing provisions shall not extend beyond December 31, 2000 except by agreement.

ARTICLE III - WORK RULES

Section 1 - Bereavement

Bereavement provisions are amended to read as follows:

(a) A regular assigned employee who has been in service one year or more shall be entitled to leave of absence with pay not to exceed three (3) working days for the time necessary to attend funeral and handle matters related thereto in the event of the death of a spouse, child, parent, parent-in-law, brother, sister, grandparent, grandchild, step-parent or step-child.

Section 2 - Hours of Service, Overtime, Etc.

Article 2 is amended to add a new subsection (f) - Working on Holidays:

(f) Time and one-half rate for work performed on holidays will be paid unless an employee does not perform compensated service on the qualifying days preceding and following a holiday. There shall be no overtime on overtime.

Section 3 - Article VII-Service Requirements of the 5/30/79 National Agreement and Article 2(c)-Overtime of the Schedule Agreement

Article VII-Service Requirements of the May 30, 1979 National Agreement and Article 2(c)-Overtime of the Schedule Agreement are deleted and all present understandings and practices applicable to not being able to eat and time required to make transfer are canceled. In lieu of a meal period and "time required to make transfer" at the end of shift employees will be compensated throughout the term of this agreement at the basic daily rates of pay listed on Attachment A. The term "time required to make transfer" includes the time it is necessary for the train dispatcher who is being relieved, to turn over to the relieving train dispatcher the information necessary to permit the relieving train dispatcher to fully and completely begin dispatcher service on the desk to which he is assigned. A train dispatcher who is required to remain in charge during the time transfer is made will not be paid overtime.

Section 4 - Article 1-Scope, Definitions

Article 1-Scope, Definitions is amended to read as follows:

(a) - Scope - The term "train dispatcher" as used herein shall be understood to include trick train dispatchers, relief train dispatchers, assigned utility dispatchers and extra train dispatchers.

(b) - Definitions -

1. Trick Train Dispatchers: This class shall include positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.

2. Relief Train Dispatchers, Assigned Utility Disptachers and Extra Train Dispatchers: This class shall include persons who are used to perform service defined in the class included in

paragraph 1 above.

(c) - Centralized Traffic Control - An employee dispatching trains over a circuit or circuits which control the movement of trains by the method commonly known as Centralized Traffic Control is a train dispatcher.

NOTE: The parties understand that work covered by the scope of this agreement does not include the supervision or operation of trains over territory where no dispatcher authorization is required (such as - within yard limits, on industrial tracks, yard tracks and spur tracks).

ARTICLE IV - DIRECT DEPOSIT

Effective October 1, 1999, all employees will be paid to the direct deposit account he or she designates.

ARTICLE V - PERSONAL LEAVE DAYS

The Personal Leave Agreement shall be amended to provide that:

(1) An employee may elect to receive payment at the straight time rate in lieu of all or some of his/her personal leave days that have not been taken at the end of each calendar year.

(2) If the carrier finds that it cannot release an employee for a personal leave day during the calendar year due to requirements of service, such employee shall receive payment at the time and one-half rate in lieu of the personal leave days the carrier cannot allow to be taken.

(3) If allowed by appropriate government authorities (e.g., the Internal Revenue Service), employees may elect to have the above payments contributed to their individual 401(k) plan. Payment for these personal leave days will be paid at the straight time rate of the last service performed and shall not be used to construct, increase or as an off-set to

any guarantees. Payment for carry-over personal leave days will be received by the first pay period of February in the following year.

ARTICLE VI - INCENTIVE COMPENSATION PROGRAM

Within ninety (90) days of the date this agreement is ratified, the parties will meet to discuss the introduction of an incentive program intended to provided periodic bonuses based upon achievement of productivity gains by the Company.

ARTICLE VII - SECTION 10901 TRANSACTIONS

Section 1

The railroad should provide at least a 60-day notice of intent to sell or lease a line of railroad to a purchaser under 49 U.S.C. §10901. During the 60-day period, the parties shall meet upon the request of the organization to discuss the planned transfer. The transaction agreement between the carrier and the purchaser should obligate the purchaser to give priority hiring consideration to employees of the selling carrier who work on the line. Further, the agreement between the carrier and purchaser should obligate the purchaser to assume a neutral stance in any union organizing effort undertaken by the organization. Should any recommendation in this paragraph be deemed contrary to the Railway Labor Act, the remaining recommendations shall continue in full force and effort.

Section 2

The selling carrier shall provide affected employees priority employment rights for other positions on the seller, both within craft and in other crafts where qualified. In addition, employees securing positions on the selling carrier which require a change in residence shall be eligible

for up to $5,000 in relocation allowance, again in the same manner as provided in the UTU and BLE national settlements.

Section 3

Employees who secure a position with the buyer should be provided with an opportunity to return to the seller during the first 12-month period. Employees displaced by the sale shall have recall rights on the seller's property, as a minimum, for a period equal to their company seniority.

ARTICLE VIII - DISCIPLINE

Article 9 - Discipline, paragraph (b), is amended to provide that discipline may be appealed within sixty (60) days from the date assessed.

ARTICLE IX - SEPARATION PAYMENT

Article II of the June 24, 1996 agreement is amended to read in its entirety as follows:

Not more than fourteen (14) Train Dispatchers on the current seniority roster who have a seniority date on or before June 24, 1996 and are either active or currently on VFA status may elect one of the following separation payment options:

1. Separate from the employment of the company and receive a lump sum separation payment of $60,000 (and the provisions of former Sections 2(3) and 2(4) would continue to apply); or

2. Separate from the employment of the Company and receive a separation allowance equivalent to sixty percent (60%) of the employee's average monthly earnings computed as follows: Such employee's monthly payment shall be determined by

reducing by 40% the total compensation received by the employee, total compensation (including protection pay and compensation earned while in dispatcher status but excluding time claim and lump sum payments) during the last twelve months (not necessarily continuous) in which he or she performed dispatcher services immediately preceding the date of separation and dividing the total by twelve. (Total compensation prior to the 40% reductions shall not exceed $65,000.) No other payments will be made during the time the employee is receiving this payment. The payments will not be subject to wage increases and will terminate seven years from the separation date or when an employee is first eligible for an unreduced annuity under the Railroad Retirement Act, files for a disability annuity under the Railroad Retirement Act or is deceased, whichever occurs first.

In the event that a greater number of employees request a separation option than the number offered, the separation option will be given to the senior employees making application therefor. Employees who elect these options are not subject to recall to service.

While receiving a monthly separation payment, an employee will be paid only to the direct deposit account he or she designates and will continue to remain subject to the Union Shop Agreement and must authorize and continue to maintain payroll deduction in the amount necessary to pay periodic dues to the organization.

While receiving a monthly separation payment, an employee will be considered active for the purpose of health, welfare and dental benefits

provided under the provisions of the ATDD Dispatcher working agreement and the Company will withhold and make payments to the Railroad Retirement Board from the payments in the same manner as from active employees to the full extent required or permitted by law. Applicable cost sharing contributions for health, welfare and dental benefits will be deducted from the payments, unless changed or modified in accordance with the Railway Labor Act.

If an employee has not reached the age when he or she is eligible to file for an unreduced annuity at the expiration of the seven year period when monthly separation payments are terminated, then the company will continue to provide for health and welfare insurance coverage as provided by the ATDD Agreement to such employee until he or she reaches the date on which they are first eligible to file for an unreduced annuity. file for a disability or is deceased, whichever occurs first.

If the Company abolishes positions resulting in the furlough of an employee, the Company will offer one separation payment option, as described above, for each job that is abolished to active employees who have seniority dates on or before June 24, 1996. These employees are eligible to elect one of the options offered, which will be given in seniority order.

In the event that the company and organization are unable to resolve any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this Article, it will be adjudicated by a special board of adjustment, paid for by the company.

ARTICLE X - SAVINGS CLAUSE

All rules, agreements, provisions, conditions or practices, however established, which may conflict with this agreement are superseded by the provisions of this agreement. The parties exchanged various proposals antecedent to adoption of various Articles that appear in this agreement. It is our mutual understanding that none of such antecedent proposals and drafts will be used by any party for any purpose and that the provisions of this agreement will be interpreted and applied as though such proposals and drafts had not been used or exchanged in the negotiation.

ARTICLE XI - EFFECTIVE DATE OF AGREEMENT

Except as otherwise provided for herein, this Agreement shall become effective sixty (60) days following the date the company receives written advice of ratification of this agreement.

ARTICLE XII - MORATORIUM

This agreement is in full and final settlement of the Organization's Section 6 Notice dated November 12, 1997.

All rules, practices and agreements in effect between the Grand Trunk Western Railroad Incorporated and the Organization, unless specifically modified, changed or abrogated herein, will remain in effect until changed in accordance with the provisions of the Railway Labor Act, as amended.

Neither party may serve nor progress any new notices prior to September 1, 2000 and not to become effective prior to January 1, 2001.

Signed at Troy, Michigan this 27th day of September 1999.

FOR THE
AMERICAN TRAIN
DISPATCHERS DEPARTMENT

Ann Snyder - General Chairwoman

J. W. Parker - Vice President

FOR THE
GRAND TRUNK WESTERN
INCORPORATED

M. J. Kovacs - Senior Manager
Labor Relations

ATTACHMENT "A"
to the
September 27, 1999 Agreement

Train Dispatcher Daily Basic Rates of Pay

Current Rate
$ 186.90

1/1/1998 Rate
$ 192.51

1/1/1999 Rate
$ 198.28

9/1/1999 Rate
$ 212.28

1/1/2000 Rate
$ 218.65

CN

CANADIAN NATIONAL RAILWAY
2800 LIVERNOIS, SUITE 300
PO BOX 5025
TROY, MI 48007-5025

GRAND TRUNK WESTERN RAILROAD INCORPORATED

MARILYN J. KOVACS
SENIOR MANAGER LABOR RELATIONS

PHONE (248) 740-6211
FAX (248) 740-6213

DULUTH, WINNIPEG & PACIFIC RAILWAY COMPANY

September 27, 1999

Our File: 8000-691
Side Letter No. 1

Ms. Ann Snyder, General Chairwoman
Brotherhood of Locomotive Engineers
American Train Dispatchers Department
2120 Old Lane
Waterford, MI 48327-1333

Dear Ms. Snyder:

This has reference to the agreement signed September 27, 1999 with your organization.

It is understood and agreed that in the event an agreement is reached with another non-operating General Committee, which contains provisions for bonus payments, wage increases, lump sum payments, cost-of-living adjustments or other benefits in excess of those provided for in our September 27, 1999 agreement, the company will upon request from your General Committee, apply such wage and/or benefit provisions to the employees covered by your agreement provided, however, that any offsetting considerations (or equivalent offsetting considerations, if appropriate) agreed to by such other general committee in return for the wage and/or benefit provisions, will likewise be applied to the employees covered by your agreement.

If the foregoing properly reflects your understanding in connection with this matter then so signify by signing in the space provided below.

Yours very truly,

M J Kovacs

M. J. Kovacs
Senior Manager Labor Relations

AGREED:

Ann Snyder

Ann Snyder, General Chairwoman

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CN

CANADIAN NATIONAL RAILWAY
2800 LIVERNOIS, SUITE 300
PO BOX 5025
TROY, MI 48007-5025

GRAND TRUNK WESTERN RAILROAD INCORPORATED

MARILYN J. KOVACS
SENIOR MANAGER LABOR RELATIONS

PHONE (248) 740-6211
FAX (248) 740-6213

DULUTH, WINNIPEG & PACIFIC RAILWAY COMPANY

September 27, 1999

Our File: 8000-691
Side Letter No. 2

Ms. Ann Snyder, General Chairwoman
Brotherhood of Locomotive Engineers
American Train Dispatchers Department
2120 Old Lane
Waterford, MI 48327-1333

Dear Ms. Snyder:

This will confirm our understanding with respect to application of the seven (7) calendar days per month eligibility requirement for benefit coverage under the health and welfare, dental and vision plans. The understanding is as follows:

1. Nothing contained in this letter shall in any way add to, diminish or alter existing rights and/or obligations of both the carrier and employees with regard to eligibility requirements for benefit coverage for employees going on furlough, furloughed or returning from furlough.

2. An employee whose assignment commences on one calendar day and ends on the following calendar day will be credited with one calendar day. That remains true even if the employee works overtime on that assignment during the following calendar day.

3. An employee whose assignment commences on one calendar day and ends on the following calendar day, and who then works another assignment during that following day, will be credited with two calendar days.

4. An employee on assignment where the regular work day is programmed to consist of more than eight (8) hours (e.g. 9, 10, 11, 12, 13 hours) shall be deemed to have rendered compensated service on one and on a fraction of another calendar day worked. For example, an employee who works a 10-hour day's assignment in lieu of an 8-hour day's assignment will be credited with 1.25 calendar days for each day worked.

5. An employee called in to work on his rest day will be credited with one calendar day.

6. An employee subject to call under applicable call rules for which there are sanctions for not responding will be credited with one calendar day for each day such employee is available for service but is not called.

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7. A new employee who reports for duty and a furloughed employee who is recalled and reports for duty on the first day allowed, who has less than seven calendar days on which he is assigned to work remaining in the month, will be eligible for benefits in the following month, provided that the employee works all regularly assigned days in such month.

8. The change in eligibility requirements is not intended to alter current practices with respect to whether vacations, holidays, personal leave days, bereavement leave and jury duty are considered as days of compensated service for purposes of the health, dental and vision plans.

9. An employee who is called to military duty to respond to an emergency (e.g., The Gulf War) and as a result is not able to meet the seven (7) day eligibility requirement shall remain eligible for benefits for four (4) months after the month in which compensated service was last performed.

10. An employee who is suspended, dismissed or retires and, consequently, does not meet the seven (7) calendar days per month eligibility requirement shall receive the same extension of coverage as such person received prior to such change.

11. Any lapse in benefits occurring as a result of this eligibility change shall not continue beyond the month so affected, provided such employee meets the eligibility requirements governing the immediately following month.

Please indicate your agreement by signing your name in the space provided below.

Yours very truly,

M. J. Kovacs
Senior Manager Labor Relations

I agree:

Ann Snyder
Ann Snyder - General Chairwoman

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CN

CANADIAN NATIONAL RAILWAY
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GRAND TRUNK WESTERN RAILROAD INCORPORATED

MARILYN J. KOVACS
SENIOR MANAGER LABOR RELATIONS

PHONE (248) 740-6211
FAX (248) 740-6213

DULUTH, WINNIPEG & PACIFIC RAILWAY COMPANY

September 27, 1999

Our File: 8000-691
Side Letter No. 3

Ms. Ann Snyder, General Chairwoman
Brotherhood of Locomotive Engineers
American Train Dispatchers Department
2120 Old Lane
Waterford, MI 48327-1333

Dear Ms. Snyder:

We are pleased that we have reached a tentative agreement settling our outstanding Section 6 notices. As we discussed, we will not be recalling employees receiving voluntary furlough allowances during the 15 day ratification period. We understand, however, that if any of the fourteen employees currently in voluntary furlough status do not elect the separation payment options explained in Article IX of this agreement, we will be recalling those employees to active service.

It is agreed that if any of the fourteen employees currently in voluntary furlough status do not elect the separation payment options and do return to active service, they will be paid a lump sum of $1200 in full and final resolution of the Troy, Michigan, relocation issue and grievance filed in behalf of all ATDD employees.

It is also understood and agreed that in qualifying for vacation and personal leave in 1999 and 2000, if any of the fourteen employees currently in voluntary furlough status who return to active service do not have banked vacation time, they will be considered as having rendered compensated service on each date they received compensation while in voluntary furlough status. Additionally, if such employee returns to service, an allowance of thirteen (13) working days sick leave will be granted for the year 1999 and they will become eligible to draw upon unused sick leave placed in their special sick leave reserve.

Yours very truly,

M. J. Kovacs
Senior Manager Labor Relations

Agreed:

Ann Snyder - General Chairwoman

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CN

CANADIAN NATIONAL RAILWAY
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PHONE (248) 740-6211
FAX (248) 740-6213

DULUTH, WINNIPEG & PACIFIC RAILWAY COMPANY

September 27, 1999

Our File: 8000-691
Side Letter No. 4

Ms. Ann Snyder, General Chairwoman
Brotherhood of Locomotive Engineers
American Train Dispatchers Department
2120 Old Lane
Waterford, MI 48327-1333

Dear Ms. Snyder:

This letter clarifies the language contained in Article IX of our tentative agreement. We understand and agree that the protections contained in Article IX do not apply to job abolishments arising due to rail merger, control or other transactions for which labor protective conditions are available under the terms imposed by any federal board or agency or to job abolishments arising due to force reductions under conditions such as fire, flood, snowstorm, hurricane, earthquake or strike.

It is also understood that the protection provided by Article IX does not supersede the protection provided to employees subject to the merger agreements dated September 4, 1979 and July 11, 1986.

Yours very truly,

M J Kovacs

M. J. Kovacs
Senior Manager Labor Relations

Agreed:

Ann Snyder

Ann Snyder - General Chairwoman

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CN

CANADIAN NATIONAL RAILWAY
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TROY, MI 48007-5025

GRAND TRUNK WESTERN RAILROAD INCORPORATED

MARILYN J. KOVACS
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DULUTH, WINNIPEG & PACIFIC RAILWAY COMPANY

September 27, 1999

File: 8000-691
Side Letter No. 5

Ms. Ann Snyder, General Chairwoman
Brotherhood of Locomotive Engineers
American Train Dispatchers Department
2120 Old Lane
Waterford, MI(48327-1333

Dear Ms. Snyder:

This has reference to the agreement signed September 27, 1999 with your organization and to our discussion concerning active employees who may apply for and be given one of the fourteen (14) separation payments offered. This letter is to confirm our accord that active employees who are given a voluntary separation option will remain in active service until replacement dispatchers have been trained and qualified.

If the foregoing properly reflects your understanding in connection with this matter, then so signify by signing in the space provided below.

Yours very truly,

M. J. Kovacs
Senior Manager Labor Relations

AGREED:

A. M. Snyder, General Chairwoman

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CN

CANADIAN NATIONAL RAILWAY
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TROY, MI 48007-5025

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MARILYN J. KOVACS
SENIOR MANAGER LABOR RELATIONS

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FAX (248) 740-6213

DULUTH, WINNIPEG & PACIFIC RAILWAY COMPANY

September 27, 1999

Our Files: 8000-691
8390-4-176
Side Letter No. 6

Ms. Ann Snyder, General Chairwoman
Brotherhood of Locomotive Engineers
American Train Dispatchers Department
2120 Old Lane
Waterford, MI 48327-1333

Dear Ms. Snyder:

This will confirm that the parties have fully and finally resolved the Troy, Michigan, relocation issue and grievance filed in behalf of all ATDD employees.

The Company also makes the commitment that the Train Dispatch Office will remain within the Detroit tri-county area (Wayne, Oakland and Macomb Counties) for a period of six (6) years from the date of this Agreement.

Yours very truly,

M J Kovacs

M. J. Kovacs
Senior Manager Labor Relations

AGREED:

Ann Snyder

Ann Snyder, General Chairwoman

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CANADIAN NATIONAL RAILWAY
2800 LIVERNOIS, SUITE 300
PO BOX 5025
TROY, MI 48007-5025
GRAND TRUNK WESTERN RAILROAD INCORPORATED

MARILYN J. KOVACS
SENIOR MANAGER LABOR RELATIONS

PHONE (248) 740-6211
FAX (248) 740-6213
DULUTH, WINNIPEG & PACIFIC RAILWAY COMPANY

September 27, 1999

File: 8000-691
Side Letter No. 7

Ms. Ann Snyder. General Chairwoman
Brotherhood of Locomotive Engineers
American Train Dispatchers Department
2120 Old Lane
Waterford, MI 48327-1333

Dear Ms. Snyder:

This has reference to the Agreement signed September 27, 1999 with your organization and to our discussion on Article III, Section 4, of that agreement. This will confirm our understanding and agreement that any work which may be exclusively within the scope of the ATDD working agreement and is currently being performed by other than train dispatcher employees may continue to be performed by other than train dispatcher employees without any penalty accruing to employees represented by the ATDD.

Please indicate your concurrence by signing in the space provided below.

Yours very truly,

M. J. Kovacs
Senior Manager Labor Relations

I CONCUR:

A. M. Snyder, General Chairwoman

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CN

CANADIAN NATIONAL RAILWAY
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DULUTH, WINNIPEG & PACIFIC RAILWAY COMPANY

September 27, 1999

File: ATDD CL

Ms. Ann Snyder, General Chairwoman
Brotherhood of Locomotive Engineers
American Train Dispatchers Department
2120 Old Lane
Waterford, MI 48327-1333

Dear Ms. Snyder:

This has reference to our discussions concerning all outstanding ATDD time claims and grievances for dates up to and including September 27, 1999 and will confirm that, except for discipline appeals and Grievance 37/79, File No. PFO001, all of these outstanding claims and grievances are fully and finally disposed of by the organization withdrawing them.

It is agreed that in exchange for the withdrawal of the referenced claims and grievances each train dispatcher whose name is listed below will be allowed payment in the amount of $20,000 -

Facknitz, E.A.
Hamilton, S.R.
Sands, L.L.
Campbell, L.P.
Ackerman, F.E.
Skitz, J.L.
Hawley, R.L.
Snyder, A. M.
Smith, P.J.
McAfee, M.L.
Mason, J.W.
Maidment, S.D.
Plumley, R.T.
Maier, A.P.
White, L. J.
Skelton, S.D.
Wery, N.D.
McDonough, K.E.
Cowgar, K.M.

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Employees A. A. Ellerbrock and R. L. Seibert will each be allowed payment in the amount of $10,000.

The parties further agree that the handling stipulated herein is without precedent or prejudice to either party's position and will not be referred to by either party in the handling of similar or dissimilar claims, cases, grievances, issues or disputes.

Please indicate agreement by signing in the space provided below.

Yours very truly,

M. J. Kovacs
Senior Manager Labor Relations

Accord:

A. M. Snyder, General Chairwoman

Date: 9-30-99

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AGREEMENT
between the
GRAND TRUNK WESTERN RAILROAD INCORPORATED
and its employees represented by the
TRAIN DISPATCHER DEPARTMENT
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

ARTICLE I - WAGES

(A) Effective January 1, 2001, all daily and hourly rates of pay shall be increased retroactively by 3%.

(B) Effective January 1, 2002, all daily and hourly rates of pay shall be increased retroactively by 3%.

(C) Effective January 1, 2003, all daily and hourly rates of pay shall be increased by 3%.

(D) Effective January 1, 2004, all daily and hourly rates of pay shall be increased by 3%.

(E) A lump sum signing bonus in the amount of $400.00 shall be made to employees covered by this agreement who have an ATDD seniority date on or before the date this agreement is ratified and an active employment relationship with the company under the agreement with the organization signatory hereto on the date of this agreement. There shall be no duplication of the signing bonus payment by virtue of employment under another agreement nor will such payments be used to offset, construct or increase guarantees in protective agreements or arrangements.

(F) The general wage increases and signing bonuses provided for in this Article I shall be payable only to employees who have an active employment relationship with the company on the date of this Agreement. Having an active employment relationship under this Article I, includes employees who are furloughed (other than those in voluntary furlough status) or those on leave of absence such as sick, personal or injury leave, unless they have applied for a disability annuity as of the date of this agreement and are subsequently granted such annuity.

(G) The lump sum and retroactive payments will be made within sixty (60) days of the date the company receives written advice of the ratification of this agreement or on or before January 15, 2003 whichever occurs later.

ARTICLE II - HEALTH AND WELFARE

(A) The parties to this Agreement will adopt the provisions of the National Health and Welfare Plan, including dental benefits and vision care and National Time-Off With Pay Agreements, such as vacation, holiday, personal leave and bereavement leave. They shall participate in the above stated National Plans and/or Agreements on a basis equivalent to agreements and understandings reached nationally between the ATDD of the BLE and carriers represented by NCCC in the bargaining which occurs as a result of the expiration of the moratorium contained in the ATDD of the BLE National Agreement. With

respect to employee cost sharing provisions, the parties agree that the employee cost sharing will equal the dollar amount contributed under the ATDD of the BLE National Agreement.

ARTICLE III - PAY DAYS

Effective January 1, 2003 employees will be paid weekly or bi-weekly only to the direct deposit account that he or she designates.

When a change in pay dates is to be implemented, the Organization will be given written notice sixty (60) days in advance of implementation.

ARTICLE IV - WORK RULES

Section 1 - Change Train Dispatcher Calling Procedure

Effective January 1, 2003 the Calling Procedure set forth in Attachment A will be implemented.

Section 2 - Assigned Utility Dispatchers

Effective January 1, 2003 Paragraph 2 of the Agreement dated March 30, 1978 covering Assigned Utility Dispatchers is amended to read as follows:

> 2. (a) Incumbents of Assigned Utility Dispatcher positions who are available their entire work week will be guaranteed not less than five (5) times the straight time trick train dispatcher's daily rate for such work week. All compensation paid at the straight time rate for work performed or for work not performed for all days included in a work week will be credited toward the guarantee.
>
> (b) The starting time for a personal leave day, sick leave day or single vacation day for an Assigned Utility Dispatcher will be

the starting time of the position worked on the preceding day if within the present work week or at the starting time of the day shift if the off day is observed immediately following an Assigned Utility Dispatcher's rest days or a compensated day off such as vacation, personal, bereavement, etc.

(c) Assigned Utility Dispatchers will be given as near as possible a two hour call in advance of the starting time of the position for which required and will only be required to protect calls for any given assignment up to one hour after such assignment's regular assigned starting time.

(d) Items (a), (b) and (c) of this Section 4, Paragraph 2, may be cancelled by either party signatory hereto by giving the other party fifteen (15) days advance written notice to that effect. If either party desires, a conference on the cancellation will be held between the date of notification and the date of cancellation. Upon cancellation, the parties will revert to the terms and conditions set forth in the Agreement dated March 30, 1978 as amended May 21, 1991 covering Assigned Utility Dispatchers.

Section 3 - Rest Days

Effective January 1, 2003 Paragraph (a)-(2) of Article 3-Rest Days is amended to read as follows:

Regularly assigned train dispatchers, including Assigned Utility Dispatchers, who are required to perform service on the rest days assigned to their position will be paid at the rate of time and one-half for service performed on either or both of such rest days or at the employee's option, in lieu of monetary compensation, he or she will be allowed compensatory time off on a one minute for one minute basis for all time worked. Compensatory time must be taken within ninety (90) days of the date earned and will be taken when mutually agreeable and consistent with service requirements. Payment for time worked at the time and one-half rate will be made in the event that compensatory time is not or cannot be taken within ninety (90) days of the date earned.

ARTICLE V - MORATORIUM

This agreement, if approved by membership ratification and the ATDD/BLE International President and the CN President, is in full and final settlement of the Organization's Section 6 Notice dated July 17, 2001 as well as any and all other outstanding Section 6 Notices.

All rules, practices and agreements in effect between the Grand Trunk Western Railroad Incorporated and the Organization, unless specifically modified, changed or abrogated herein, will remain in effect until changed in accordance with the provisions of the Railway Labor Act, as amended.

Neither party may serve nor progress any new notices prior to September 1, 2004 and not to become effective prior to January 1, 2005.

Signed this 31st day of October 2002.

FOR THE AMERICAN TRAIN DISPATCHERS DEPARTMENT-BROTHERHOOD OF LOCOMOTIVE ENGINEERS

W. Patrick Howard
General Chairman

A. M. Snyder, Vice President

FOR THE GRAND TRUNK WESTERN RAILROAD INCORPORATED

M. J. Kovacs
Director Labor Relations

Marilyn J. Kovacs, Director Labor Relations
Canadian National Railway (Grand Trunk District)
2800 Livernois, Suite 300, PO Box 5025
Troy, Michigan 48007-5025
Phone: (248) 740-6211 Fax: (248) 740-6213

October 31, 2002
Our File: 8000-705
Side Letter No. 1

Mr. W. Patrick Howard, General Chairman
American Train Dispatchers Department of
Brotherhood of Locomotive Engineers
119 S. Corbin
Holly, MI 48422-1738

Dear Sir:

This has reference to the agreement signed October 31, 2002 with your organization.

It is understood and agreed that in the event an agreement is reached with another non-operating-GTW-General Committee, which contains provisions for bonus payments, wage increases, lump sum payments, cost-of-living adjustments or other benefits in excess of those provided for in our October 31, 2002 agreement, the company will upon request from your General Committee, apply such wage and/or benefit provisions to the employees covered by your agreement provided, however, that any offsetting considerations (or equivalent offsetting considerations, if appropriate) agreed to by such other general committee in return for the wage and/or benefit provisions, will likewise be applied to the employees covered by your agreement.

If the foregoing properly reflects your understanding in connection with this matter then so signify by signing in the space provided below.

Yours very truly,

M. J. Kovacs
Director Labor Relations

AGREED:

W. Patrick Howard, General Chairman

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Marilyn J. Kovacs, Director Labor Relations
Canadian National Railway (Grand Trunk District)
2800 Livernois, Suite 300, PO Box 5025
Troy, Michigan 48007-5025
Phone: (248) 740-6211 Fax: (248) 740-6213

October 31, 2002
Our File: 8000-705
Side Letter No. 2

Mr. W. Patrick Howard, General Chairman
American Train Dispatchers Department of
Brotherhood of Locomotive Engineers
119 S. Corbin
Holly, MI 48422-1738

Dear Sir:

This has reference to the agreement signed October 31, 2002 with your organization and will confirm that the signing bonus payment provided in Article I, Section (E) will be doubled if the company receives written advice of the ratification of this agreement on or before November 12, 2002.

Additionally, upon payment of the above, all time claims currently pending, other than those involving discipline and NRAB Case File No. 02-3-332, are considered withdrawn without precedent or prejudice to the position of either party. This handling will not be referred to by either party in the handling of similar or dissimilar cases, issues or disputes.

Please indicate your concurrence by signing in the space provided below.

Yours very truly,

M. J. Kovacs
Director Labor Relations

AGREED:

W. Patrick Howard, General Chairman

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Marilyn J. Kovacs, Director Labor Relations
Canadian National Railway (Grand Trunk District)
2800 Livernois, Suite 300, PO Box 5025
Troy, Michigan 48007-5025
Phone: (248) 740-6211 Fax: (248) 740-6213

October 31, 2002
Our File: 8000-705
Side Letter No. 3

Mr. W. Patrick Howard, General Chairman
American Train Dispatchers Department of
Brotherhood of Locomotive Engineers
119 S. Corbin
Holly, MI 48422-1738

Dear Sir:

The parties recognize that the purpose of Article IV, Section 2 (c) of the Agreement dated October 31, 2002 is to provide improved expectation for the normal workday of the Assigned Utility Dispatchers. The parties also understand and concur that all employees, including regularly assigned Train Dispatchers and Assigned Utility Dispatchers, are subject to call and may be required to report for service at any time due to emergency or unforeseen circumstances.

It is agreed that upon written request from the Carrier, when service requirements are not being met under the procedure set forth in Article IV, Section 2 (c), the parties shall meet in conference; and, through joint, cooperative efforts, develop and implement a program to protect service requirements during abnormal or emergency circumstances.

Please indicate your concurrence by signing in the space provided below.

Yours very truly,

M. J. Kovacs
Director Labor Relations

AGREED:

W. Patrick Howard, General Chairman

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ATTACHMENT A TO THE ATDD
March 22, 2002 AGREEMENT

The Train Dispatcher calling procedure is as follows effective January 1, 2003.

1. First out, qualified AUD.
    a. C-1 Spareboard (AUD all 5 days of assignment) is called first.
    b. E-1 Spareboard (Relief Position working some AUD shifts within workweek) is called last.
2. The incumbent of the position.
3. Senior qualified train dispatcher observing rest, not conflicting with hours of service.
4. Senior qualified train dispatcher observing rest, who would not be rested for his own position.
    a. Definition of "own position" in the clause "would not be rested for own position" includes AUD's assigned workdays.
5. Diversion at straight time rate. Not a seniority call.
6. Senior qualified train dispatcher observing rest following vacation.
7. Senior qualified train dispatcher called off Vacation or Personal Day. Punitive rate in addition to personal or vacation day.
8. Senior qualified dispatcher call off Sick Day. Punitive rate in addition to sick day.
9. Split shift. Incumbents on either side of vacancy are required to work 4 hours over. Not a seniority call. *
10. Double shift. Not a seniority call. *

* The Organization and Carrier recognize FRA hours of service regulations must be complied with.

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AN AGREEMENT

BETWEEN

CANADIAN NATIONAL RAILWAY

AND

IT'S EMPLOYEES REPRESENTED BY

THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

January 31, 2006

AGREEMENT

BETWEEN

CN (FORMER GRAND TRUNK WESTERN RAILROAD)

AND ITS EMPLOYEES REPRESENTED BY

THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

It is hereby agreed:

ARTICLE I – Compensation

Section 1 - Wages

(A) Effective January 1, 2005, 2006, 2007, all standard basic daily rates of pay for employees covered by this Agreement shall be increased by 3%. Effective January 1, 2008, all standard basic daily rates of pay for employees covered by this Agreement shall be increased by 4%. Effective January 1, 2009, all standard basic daily rates of pay for employees covered by this Agreement shall be increased by 3%.

(B) In consideration of cooperation and assistance in Agreement Codification, withdrawals of all claims and grievances and contract settlement, a payment in the amount of $500.00 shall be made to employees covered by this agreement who have an active employment relationship with the Grand Trunk Railroad Incorporated under agreement with the organization.

The payments outlined in Section 1(B) will be paid within sixty (60) days of the date that this agreement has been ratified, signed by the Organization's representatives, and received by the Company, and shall be subject to all applicable withholdings.

The payments provided for in Section 1 shall be payable only to employees who have an active employment relationship with the company on the effective date of this agreement. Having an active employment relationship under Section 1, includes employees who are furloughed (other than those in voluntary furlough status) or those on leave of absence such as sick, personal or injury leave, unless they have applied for a disability annuity as of the date of this agreement and are subsequently granted such annuity.

BENEFITS - 401K Plan

A. Effective January 1, 2006, the Company will maintain a 401 (k) plan for employees covered by this agreement. Under the plan, for up to the first four percent (4%) of an employee's salary contributed, the company will contribute $.25 for each $1.00 contributed by the employee. The employee may contribute an amount above 4%, up to the maximum legal amount with no company participation.

B. The company will be responsible for all costs of establishing the plan, including the making of payroll deductions and payments of withheld wages to the trustee. The employee will be responsible for all costs of services in connection with the operation of the 401 (k) plans.

ARTICLE II – HEALTH AND WELFARE

The parties' proposals concerning health and welfare matters contained in their respective bargaining notices served on and after September 1, 2004 are, as of the date of this Agreement, being handled on a national basis by the National Carriers' Conference Committee (NCCC) on behalf of the participating carriers and a coalition of national railroad unions that includes the ATDA. It is mutually agreed that the settlement of those proposals with those organizations will be incorporated into and become part of this Agreement upon the effective date of such settlement, and will be deemed full and final disposition of the parties' notices on these matters.

III. Side Letters

Side Letter 1 is attached to this Memorandum and added to the agreement.

ARTICLE IV – WORK RULES

(A) Sick Benefits – The Sick Benefits Agreement dated February 23, 1976, designated as Article 10, paragraph (d) of the Train Dispatchers Working Agreement, as amended on January 1, 1983 is further amended to the extent that Section 1 is revised to read as follows:

Section 1. Subject to the conditions enumerated, an employee hired after the effective date of this agreement who has been in continuous service of the company for the period of time as specified, will be granted an allowance not in excess of a day's pay at his established rate for time absent on account of a bona fide sickness:

(a) Upon completion of one calendar year of service a total in the following year of service of three (3) working days sick leave.

(b) Upon completion of two calendar years of service a total in the following year of service of five (5) working days sick leave.

(c) Upon completion of three calendar years of service a total in the following year of service of seven (7) working days sick leave.

(d) Upon completion of four calendar years of service a total in the following year of service of nine (9) working days sick leave.

(e) Upon completion of five calendar years of service a total in the following year of service of eleven (11) working days sick leave.

(f) Upon completion of six calendar years of service a total in the following year of service of thirteen (13) working days sick leave.

B. Effective January 1, 2006, the calling procedures outlined in Attachment A of the Agreement signed October 31, 2002 are amended to read as forth in Attachment A (m1).

C. Effective January 1, 2006, train dispatchers who are required to instruct train dispatcher trainees will be compensated one hour per shift.

D. The parties recognize that a Codification of the Agreement is in the best interest of all parties and hereby commit to jointly codify the existing Agreement.

ARTICLE VIII – General Provisions

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the agreement and is in settlement of the disputes growing out of the notices dated on January 10, 2005 served by the Organization upon GTW Incorporated, and the notices dated subsequent to January 1, 2005 served by the GTW Incorporated upon the Organization.

(b) Rules and understandings that are not specifically addressed in this Agreement remain unchanged. This Agreement shall remain in effect through December 31, 2009 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(c) The parties to this Agreement shall not serve nor progress prior to October 1, 2009 (not to become effective before January 1, 2010) any notice or proposal for making any changes to any of the parties' agreements, and any proposals in pending notices are hereby withdrawn.

(d) This Article will not bar management and committees from mutually agreeing upon any subject of mutual interest.

SIGNED AT TROY, MI THIS 31st DAY OF January, 2006.

For CN:

Roger K. MacDougall
Senior Director-Labor Relations

Eve St.Amant
Manager-Labor Relations

For the Employees Represented by the ATDA:

Crawford Boggs
Vice President, ATDA

W. Patrick Howard
General Chairman/ATDA

Joseph Mason
Local Chairman/ATDA

APPROVED:

K. A. Madigan
Vice President-Labor Relations
North America

APPROVED:

F. L. McCann
President/ATDA

ATTACHMENT "A (m1)"

TO THE JANUARY 1, 2006 AGREEMENT

BETWEEN

CN (FORMER GRAND TRUNK WESTERN RAILROAD INCORPORTED)

AND ITS EMPLOYEES REPRESENTED BY

THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

Regularly assigned Train Dispatchers will be automatically marked-up from rest days, personal leave days and vacations at 00:01 and will be expected to work their next scheduled shift.

Assigned Utility Dispatchers will be automatically marked-up from rest days, personal leave days and vacations at 00:01 and will be subject to call for the next scheduled shift.

Assigned Utility Dispatchers will operate on a first-in, first-out rotating method based on mark-up time.

Effective January 1, 2006, the Train Dispatcher calling procedure is modified to read as follows:

1) First out, qualified AUD.

2) The incumbent of the position.

3) Senior qualified train dispatcher observing rest, not conflicting with hours of service.

4) Senior qualified train dispatcher observing rest, who would not be rested for his own position.

5) Diversion at straight time rate.

6) Senior qualified train dispatcher observing rest following vacation.

7) Senior qualified train dispatcher called off Vacation or Personal Day.

8) Senior qualified dispatcher called off sick day.

9) Split Shift. Incumbents on either side of vacancy may be required to work four additional hours. Not a seniority call.

10) Double shift. Not a seniority call.

Note: The Carrier and the Organization recognize FRA Hours of Service regulations must be complied with. All efforts will be made to minimize hours of service violations.

The calling procedures outlined herein may be changed at anytime by mutual concurrence between the Director Labor Relations and the General Chairman.

Side Letter 1 – Health and Welfare

United States Region
Labor Relations Department

17641 South Ashland Avenue
Homewood, Illinois 60430

www.cn.ca

December 1, 2005

Mr. W. Patrick Howard
General Chairman - ATDA

Dear Mr. Howard:

The following confirms our discussion during the just concluded negotiations that resulted in the January 1, 2005 Agreement regarding retroactive back payment towards Health and Welfare and retroactive employee cost sharing.

In this regard the parties agreed that the there will be no retroactive back payment towards Health and Welfare and that an increase in the current employee cost sharing will not take effect until the current round of Health and Welfare is agreed upon and actually goes into effect.

I trust the foregoing reflects our discussions on this matter.

Yours truly,

R. K. MacDougall
Sr. Director Labor Relations

I concur:

W. Patrick Howard
General Chairman

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BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 33556, Sub No. ~~6~~ 5

CANADIAN NATIONAL RAILWAY, GRAND TRUNK CORPORATION, GRAND TRUNK WESTERN RAILROAD COMPANY INCORPORATED – CONTROL – ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, etc.

ARBITRATION SUBMISSIONS OF RESPONDENT AMERICAN TRAIN DISPATCHERS ASSOCIATION

VOLUME II

(Pages R-203 - R-400)

Michael S. Wolly
ZWERDLING, PAUL, KAHN & WOLLY, P.C.
1025 Connecticut Avenue NW
Suite 712
Washington, D.C. 20036
(202) 857-5000

Attorney for ATDA

April 14, 2011

ATDA EXHIBIT 2

AGREEMENT BETWEEN

ILLINOIS CENTRAL RAILROAD (IC)
AND
ILLINOIS CENTRAL TRAIN DISPATCHERS ASSOCIATION

IT IS AGREED:

ARTICLE I – RATES OF PAY

Rule 14 is abrogated and replaced with the following:

(a) The training rate for newly hired RTCs will be a minimum of $65,000/year until they are fully qualified on one desk. Once an RTC is qualified on one desk, they will be compensated at a minimum of $70,000/year. Upon their first anniversary of service, an RTC will be compensated a minimum of $75,000/year. Thereafter, RTCs will be compensated based on performance, as determined by management, except as otherwise provided in paragraph (b).

(b) Unless otherwise provided for and agreed to between the Carrier and the Associations, Regular Extra and Extra RTCs training on a new desk will be expected to learn the new desk within a minimum of five (5) and a maximum of twenty (20), 8-hour working days (including transfers) of training during a six (6) month period. Those who are training on a new desk will be paid at their regular rate for the first twenty (20) working days of such training. If not fully qualified to work the new desk after twenty (20) working days of training, they will be compensated 85% of their normal rate during the remaining days of training. Those who are qualified prior to the expiration of twenty (20) days shall mark up upon being qualified.

(c) Effective January 1, 2009, those who are working as trainers will be paid $23.00 per day, and increased $1.00 per day every other January 1st thereafter. Training pay will only be paid to those RTCs training non-qualified RTCs. Qualified RTCs who are requested to train a non-qualified RTC will not have the right of refusal.

ARTICLE II - EMPLOYEE SHARE INVESTMENT PLAN

Effective on the date of this Agreement, the Company Employee Share Investment Plan will be made available to all employees subject to this Agreement in accordance with the terms of the Plan. The Company may, at its discretion, alter, amend, revise or discontinue the Plan, in any manner, in whole or in part. This provision will not form part of any Collective Agreement.

ARTICLE III – PAYROLL DIRECT DEPOSIT

Effective on the date of this Agreement, at the Company's discretion all employees may be paid weekly or bi-weekly to the direct deposit account designated by the employee.

ARTICLE IV – BEREAVEMENT

Effective on the date of this Agreement, all bereavement rules are abrogated and the following is substituted therefore:

Employees in active service shall be entitled to bereavement leave of three (3) work days, to be taken at the discretion of the employee, upon furnishing proof of death of the employee's immediate family member. Bereavement leave will be taken within six months from the date of death of the employee's immediate family member. For purposes of this rule, immediate family consists of the employee's spouse, child, parent, grandparent, grandchild, brother, sister, half-brother, half-sister, step-parent, step-child and spouse's parent. In such cases, a basic day's pay at the rate of the last service rendered will be allowed for each of the three (3) days. Employees will make provision for taking leave with their supervisor in the usual manner.

- Family relationships created through the legal adoption process shall qualify for bereavement leave. Any other family relationship not specifically mentioned shall be excluded.

- Bereavement leave non-availability shall be considered neutral for determining the qualifying day for holiday pay purposes. The workday preceding or following the employee's bereavement leave, as the case may be, shall be considered the qualifying day for holiday pay purposes.

ARTICLE V – FILLING TEMPORARY VACANCIES

Rule 10 is amended to read:

Temporary vacancies on regular positions, when filled, will be filled by qualified employees in seniority order available under the Hours of Service Law in the following order of preference:

(a) Regular employee requesting to work the assignment at the pro-rata rate, provided the resulting vacancy can be backfilled at the straight time rate.
(b) Extra employee at the straight time rate of pay
(c) Regular employee willing to accept the assignment at the straight time rate.
(d) Regular employee at the overtime rate.
(e) Extra employee at the overtime rate.
(f) Force assignment of the junior qualified employee.
(g) Regularly assigned employee available at the overtime rate, who may not be available for their regularly assigned position.

ARTICLE VI – PERSONAL DAYS

A. Employees shall be entitled to a maximum of six (6) paid personal leave days per calendar year on the following basis:

   i. Employees who have completed one year of compensated service shall be entitled to two (2) personal leave days in the subsequent calendar year.
   ii. Employees who have completed two years of compensated service shall be entitled to three (3) personal leave days in the subsequent calendar year.
   iii. Employees who have completed three years of compensated service shall be entitled to four (4) personal leave days in the subsequent calendar year.
   iv. Employees who have completed four years of compensated service shall be entitled to five (5) personal leave days in the subsequent calendar year.
   v. Employees who have completed five years of compensated service shall be entitled to six (6) personal leave days in the subsequent calendar year.

B. Personal leave days may be taken, subject to the requirements of the company's service, upon forty-eight (48) hours advance notice from the employee to the proper carrier officer and permission to take such leave shall not be unreasonably withheld. Employees must request the use of personal leave days between January 1 and October 15 of each calendar year. Employees not permitted to take one or more personal leave days in a calendar year, shall be paid eight (8) hours at the pro-rata rate of their last regularly assigned position for each of the unused days. Such payment shall be made as soon as possible after the end of the calendar year in which the leave was not permitted.

ARTICLE VII – HOLIDAYS

Rule 25(a) and (b) are amended as follows:

(a) RTCs who work on New Year's Day, President's Day, Good Friday, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, the Friday after Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve will be paid at the rate of time and one-half. There shall be no overtime on overtime.

(b) One the above holidays, the company may consolidate work and desks in any manner with 24-hours advance notice.

ARTICLE VIII – 401(k)

(a) Employees covered by this Agreement will be eligible to participate in the Illinois Central 401(k) Plan.

(b) Under this plan, the company will contribute two percent (2%) of an employee's salary into the Plan.

(c) An employee participating in the plan may contribute an amount above two percent (2%) of salary to the maximum IRS limits.

ARTICLE IX – HEALTH & WELFARE

RTCs will be covered by the same Health & Welfare benefit package provided to CN-U.S. Management employees, with the same plan choices, employee cost share options, eligibility rules and termination rules, including all future plan offerings, terminations and amendments.

This includes, but is not limited to, Medical, Dental, Vision, Prescription Drug, Medical Leave of Absence Salary Continuation, Long Term Disability, Life Insurance, Retiree Life Insurance and Retiree Medical.

ARTICLE X – OVERTIME

Rule 13 is amended as follows:

All time worked by RTCs in excess of eight (8) hours or on rest days shall be paid for at the rate of time and one-half. Time consumed in making transfer shall not be counted as overtime. There shall be no overtime on overtime.

ARTICLE XI – EXERCISE OF SENIORITY

Rule 5(e) is amended as follows:

(e) RTCs with displacement rights must exercise seniority in accordance with paragraph (a) above within five (5) days or forfeit displacement rights until a new position is created or vacancy occurs. RTCs with displacement rights must give at least three days notice to the Company and to the RTC affected of their intention to displace and will be bound thereby. RTCs with displacement rights who break in on more than one position will be compensated for break-in time only on the territory of the position taken. RTCs must make actual physical displacement to begin breaking-in on a new position, within five (5) days unless prevented from doing so by reason of sickness or vacation, in which case such five (5) days will be extended by the number of sickness or vacation days taken during this period. RTCs are subject to call for extra work during their displacement period.

ARTICLE XII – BULLETINING OF POSITIONS

Rule 9(a) is amended as follows:

(a) New positions and vacancies know to be of more than thirty (30) days duration will be bulletined not later than five (5) days after the date of vacancy. RTCs desiring such positions must file written application within five (5) days from date of bulletin. The name of the successful applicant will be posted on the bulletin board within three (3) days from the date the bulletin expires, and a copy of the notice will be sent to the President of the Association. RTCs may withdraw their bids before the expiration of the bulletin period but not thereafter.

ARTICLE XIII – ABOLISHING POSITIONS

Rule 11(a) is amended as follows:

(a) RTCs will be given at least 24-hours notice before their positions are abolished or before changes provided for in Rule 5(a)(4) are instituted, except as otherwise provided in paragraph (c).

ARTICLE IXV - GENERAL PROVISIONS

(a). The purpose of this Agreement is to settle any and all Section 6 notices dated prior to the effective date of this agreement, and to fix the general level of compensation and rules covering working conditions through December 31, 2013, and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(b) Neither party to this agreement shall serve, prior to November 1, 2013, (not to become effective prior to January 1, 2014), any notice or proposal for the purpose of changing, adding to, or deleting the provisions of any agreement in effect between the parties.

Unless otherwise specified, this Agreement is effective on the date signed.

Signed the 2nd day of February 2009, at Homewood, Illinois.

FOR THE ILLINOIS CENTRAL RAILROAD

H.Cary IV
General Superintendent

C.K. Cortez
Sr. Manager – Labor Relations

R.K. MacDougall
Sr. Director – Labor Relations

ILLINOIS CENTRAL TRAIN DISPATCHERS ASSOCIATION

J.A. Czarny
Vice President

M.H. Christofore
President

ILLINOIS CENTRAL RAILROAD COMPANY

SCHEDULE OF RULES

FOR

EMPLOYEES REPRESENTED BY

THE ILLINOIS CENTRAL TRAIN DISPATCHERS' ASSOCIATION

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Rule 1. EMPLOYEES COVERED BY AGREEMENT

This agreement covers Rail Traffic Controller (RTC) positions, to the extent provided. Except where otherwise provided in this agreement, "RTC" refers to the classification listed above.

Rule 2. ESTABLISHMENT OF SENIORITY

(a) Seniority will be established from the date on which first service was performed as an RTC for those who have remained in continuous service. When two or more employees enter upon their duties at the same time on the same day, the seniority rank will be determined based on length of service with the Company, the oldest being placed highest. If the tie is still unbroken, rank will be established in the order of birth date, the oldest being listed highest.

(b) The seniority of an RTC who may have been dismissed or suspended and reinstated will be the same as though the RTC had not been dismissed or suspended.

(c) Seniority of RTCs re-employed will be established as of the date on which first service is performed as an RTC after re-employment.

Rule 3. ASSIGNMENT OF REGULAR EXTRA AND EXTRA POSITIONS

After the assignment of a full complement of positions of RTCs, there will also be assigned a sufficient number of Regular Extra and Extra RTCs required for relief work. Regular positions will not be abolished and filled from the extra board when full time work remains.

Rule 4. SENIORITY ROSTERS AND DATES

(a) The date of an RTC's seniority as shown on the seniority roster will not be changed except by mutual agreement between the Company and the Association.

(b) Each year the names of all RTCs who have not performed service as an RTC within the last four years will be removed from the seniority roster. This is not applicable to RTCs on leave of absence due to illness or RTCs promoted to other positions with the Company, or RTCs granted leave of absence by mutual agreement between the Company and the Association.

(c) When an increase in force is made, necessitating employment of additional RTCs, due consideration will be given those whose names have been removed from the seniority roster.

(d) The seniority roster will be revised on the first day of January of each year and posted in the RTC Center with a copy furnished to all officers of the Association.

Rule 5. EXERCISE OF SENIORITY

(a) Except as provided in Rule 8, an RTC may exercise seniority only as follows:

(1) When the position is abolished

(2) When displaced by a senior RTC.

(3) When permanent vacancies occur or new positions are established and bulletined in accordance with the provisions of Rule 8 or when temporary vacancies exist.

(4) When there is territory added to a position or changes in procedure such as addition or substitution of train orders, CTC, ATD or radio, the incumbent of the position may exercise seniority from the position affected. This will not apply in emergency changes. When two or more desks or positions are consolidated, the RTCs involved will be permitted, in seniority order, to retain the consolidated position (until all are filled) or to exercise seniority rights.

NOTE: When changes in procedures are considered by management to be of such nature as not to fall under the provisions of this rule but the Association considers such changes to be applicable, the matter will be handled in accordance with Rule 19 and the RTC involved will not have displacement rights from the position affected until the dispute is disposed of.

(5) When there is a change of more than one hour in the starting time of the position.

(6) When the regularly assigned rest days of a position are changed, when the number of first, second or third tricks of a regular relief assignment are changed, seniority may be exercised either to or from the position affected.

(7) When returning to RTC service in accordance with Rule 6.

(b) RTCs holding regular positions may, upon written notice to the Senior Carrier Officer assigned to the RTC Center and President of the Association, relinquish rights to such positions and revert to extra status without impairment of rights but may be required to continue on their regular positions until such positions are bulletined; assigned, and qualified relief is available.

(c) A regularly assigned RTC displaced for any reason may displace any junior RTC holding a regular assignment or may revert to the Extra board.

(d) The waiving of rights to any vacancy will not cause forfeiture of seniority rights to subsequent vacancies.

(e) RTCs with displacement rights must exercise seniority in accordance with paragraph (a) above within thirty (30) days or forfeit displacement rights until a new position is created or vacancy occurs. The performance of extra work during the first ten-day period will not constitute an exercise of seniority; thereafter the performance of extra work will constitute an exercise of seniority. RTCs with displacement rights must give at least three days' notice to the Company and to the RTC affected of their intention to displace and will be bound thereby. RTCs with displacement rights who break in on more than one position will be compensated for break-in time only on the territory of the position taken. RTCs must make actual physical displacement within 30 days unless prevented from doing so by reason of sickness or vacation, in which case such 30 days will be extended by the number of sickness or vacation days taken during this period.

(f) When positions are abolished and restored within 90 days, displaced RTCs may, upon application to the Senior Carrier Officer assigned to the RTC Center, return to their former positions. Positions abolished and restored after 90 days will be bulletined in accordance with Rule 8.

(g) RTCs exercising their seniority to temporary vacancies as provided in paragraph (a)(3) above will not be permitted to return to former positions until such temporary vacancy ceases to exist. Time gained by moving to such temporary vacancies must be lost back before returning to their regular assignments, and such lost days will be considered rest days.

Rule 6. RETURN TO SERVICE UNDER THIS AGREEMENT

(a) RTCs now holding positions with the Company, or who may hereafter accept position with the company, not within the scope of this agreement, and RTCs on extended sick leave, may, upon returning to service under this agreement, return to the position last held, if still in existence and not held by a senior employee, or to any position bulletined during their absence not occupied by a senior employee, or take extra work.

(b) An RTC now on authorized leave of absence, or who may be granted leave of absence in the future, may, upon return to service within six months from effective date of leave of absence, exercise seniority to the position which was left, if not occupied by a senior employee exercising displacement rights under Rule 5. If return is after the six-month period, they will assume the status of an extra or regular extra RTC and may only bid on assignments (regular or temporary) bulletined after return to active service.

Rule 7. FAILURE TO PERFORM SERVICE

RTCs now on the RTC seniority roster who will not accept either regular work or make themselves available for extra work as an RTC, when their seniority entitles them to same, will be removed from the RTC seniority roster unless grated leave of absence by agreement

between Management and the Association. The above shall not be considered to conflict with the application of Rule 4(b).

Rule 8. VACANCIES AND NEW POSITIONS

(a) Regular positions and regular relief positions will be bulletined in accordance with Rule 9. Positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletin. Positions or vacancies of indefinite or unknown duration need not be bulletined until the expiration of thirty (30) days from the date of vacancy.

(b) Regular assigned RTCs who accept temporary positions or vacancies under the scope of this agreement will, at the termination of such positions or vacancies, be permitted to return to their former position within the scope of this agreement. The position vacated by a successful applicant for a temporary position or vacancy will not be bulletined.

(c) All bulletined positions or vacancies (either temporary or permanent) will be filled in accordance with the seniority roster.

Rule 9. BULLETINING OF POSITIONS

(a) New positions and vacancies know to be of more than thirty (30) days duration will be bulletined not later than five (5) days after the date of vacancy. RTCs desiring such positions must file written application within ten (10) days from date of bulletin. The name of the successful applicant will be posted on the bulletin board within three (3) days from the date the bulletin expires, and a copy of the notice will be sent to the President of the Association. RTCs may withdraw their bids before the expiration of the bulletin period but not thereafter.

(b) Bulletins will state whether the positions or vacancies are temporary or permanent, regular or relief. Only the first temporary vacancy will be bulletined. A bulletined temporary vacancy will be re-bulletined as permanent at the end of the six (6) months from date of the original bulletin if the regular occupant has not returned.

(c) Any RTCs on vacation or excused absence when positions are bulletined, may, within 48 hours after their return, place themselves on such positions if their seniority permits. If they so place themselves, other RTCs displaced thereby will return to their former assignments.

(d) The successful applicant will assume the duties of the new position within three (3) days from the date the position is awarded, unless more time is needed to provide qualified relief on the former position or the successful applicant requires additional time to qualify on the new position, but in no case more than thirty (30) days from date position is awarded. If the successful applicant is not placed on the new position within thirty (30) days from date position is awarded, the RTC will be compensated thereafter in accordance with Rule 14 for each day service is performed on other than the new position. The 30-day period on this rule

will be extended by the number of days vacation, sick days and personal days taken during this period.

(e) A Regular Extra or Extra RTC qualifying on a position for which he is the successful applicant will be allowed a maximum of twenty (20) consecutive break in days, excluding rest days, undisturbed by actions over which the Company has control. If the break in days are interrupted by reasons over which the Company has no control, the RTC upon return to service will be entitled to the unused remainder of the twenty (20) days. If unable to qualify within this time they will be compensated at 85% of their normal rate during the remaining days of training.

(f) New positions and vacancies will be bulletined. If there is no successful applicant the junior qualified Regular Extra or Extra RTC will be assigned the position. If no Regular Extra or Extra RTC is qualified, the junior such employee will be assigned the position.

Rule 10. FILLING TEMPORARY VACANCIES

Temporary vacancies on regular positions, when filled, will be filled by qualified employees in seniority order available under the Hours of Service Law in the following order of preference:

(a) Regular employee requesting to work the assignment at the pro-rata rate, provided the resulting vacancy can be backfilled at the straight time rate.
(b) Extra employee at the straight time rate of pay
(c) Regular employee willing to accept the assignment at the straight time rate plus off assignment pay
(d) Regular employee at the overtime rate.
(e) Extra employee at the overtime rate.
(f) Force assignment of the junior qualified employee.

Rule 11. ABOLISHING POSITIONS

(a) RTCs will be given at least ten (10) calendar days notice before their positions are abolished or before changes provided for in Rule 5(a)(4) are instituted, except as otherwise provided in paragraph (c).

(b) Paragraph (a) is not applicable to emergency or temporary positions established for a period of less than thirty (30) days.

(c) Advance notice will not be required to make force reduction under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire, strike, or temporary plant shutdown, provided that such conditions result in suspension of the work of the affected employees. Positions abolished in accordance with this paragraph will be re-established at the end of the emergency and the incumbents shall return to their former positions.

Rule 12. HOURS OF SERVICE

Eight (8) consecutive hours, exclusive of time required for making transfer, will constitute a day's work for all RTCs.

Rule 13. OVERTIME

All time worked by RTCs in excess of eight (8) hours or on rest days shall be paid for at the rate of time and one-half. Time consumed in making transfer shall not be counted as overtime.

Rule 14. RATE OF PAY

(a) The training rate for newly hired RTCs will be a minimum of $50,000 until they are fully qualified on one desk. Thereafter, RTCs will be compensated as determined by management, except as otherwise provided in paragraph (b).

(b) Regular Extra and Extra RTCs training on a new desk will be expected to learn the new desk within a maximum of twenty (20) working days of training during a six (6) month period. Those who are training on a new desk will be paid at their regular rate for the first twenty (20) working days of such training. If not fully qualified to work the new desk after twenty (20) working days of training, they will be compensated 85% of their normal rate during the remaining days of training.

(c) Those who are working as trainers, as well as those who are working off assignment, will be paid $21.00 per day, increased to $22.00 per day January 1, 2007, and $1.00 per day every other January 1st thereafter.

Rule 15. CHANGING POSITIONS OR TRICKS

Regular assigned RTCs changing positions or tricks at the request of the Company will receive full pay in accordance with Rule 14 for time lost due to the Hours of Service Law.

Rule 16. VACATIONS

(a) Employees promoted to RTC who had 120 days of compensated service with the Company the previous calendar year will be entitled to five (5) days vacation. In the following calendar year, such employees will be entitled to fifteen (15) days vacation. Thereafter, employees who perform 100 days of compensated service in the preceding calendar year will be entitled to fifteen (15) days vacation in the following year when they have completed two to nine years of service, twenty (20) days upon completion of ten to nineteen calendar years of service, and twenty five (25) days upon completion of twenty calendar years or more of service. Employees who have earned vacation days while employed by the Company under

the number of first, second, or third tricks of a regular relief assignment. Such notice will be posted on the bulletin board and a copy sent to the President of the Association.

(d) It is the intent of this rule that where practicable, employees will be relieved from service on their rest days. They will not be required to hold themselves available for call on their rest days except in case of emergency. But, Regular Extra and Extra RTCs who are not going to be at the telephone number furnished the Company at times when they should be available for work, will either furnish a number where they can be reached or call the office in which they are working a sufficient time before each trick to allow them to be used for relief on that trick.

(e) RTCs who move to temporary vacancies under the provisions of Rule 10 will assume the rest days of the vacancy to which they are moving. RTCs working off their regular assignment under the provisions of Rule 25 will retain the rest days of their regular assignment.

Rule 18. QUALIFYING FOR POSITIONS – ROAD TRIPS

RTCs required by the Company to make trips on the road to maintain familiarity with the physical characteristics of the territory to which assigned will be paid one day, not to exceed eight hours in any 24-hour period, for each day consumed making such trips. Reasonable expense for meals, lodging, and transportation away from headquarters will be allowed.

Rule 19. ADJUSTMENTS

Matters to be adjusted may be taken up in writing with the appropriate Company officer. The Company will designate the appropriate officer to the President of the Association. Response will be made in writing within 60 days of date presented. In the event that any adjustment cannot satisfactorily be disposed of with the designated officer, the employee shall have the right of appeal within 60 days to the appropriate designated Labor Relations Officer.

Matters of adjustment must be presented in writing within 60 days of their occurrence; otherwise they will not be considered. If the matter for adjustment includes a claim for compensation, and if no reply is given by the designated officer within 60 days of the date presented, the claim for compensation shall be allowed without regard to the merits. If a claim for compensation is declined by the designated officer, it will be considered abandoned and barred if not appealed to the appropriate designated Labor Relations Officer within 60 days of declination.

Rule 20. DISCIPLINE

(a) RTCs will be given written notice of the charges against them within ten (10) days of the date the Senior Carrier Officer assigned to the RTC Center has knowledge of the offense, unless additional time is requested by the Senior Carrier Officer assigned to the RTC Center or by the President of the Association. A decision will be rendered as promptly as possible but within 12 days of the formal investigation. Discipline by suspension may, if the Company elects, be postponed up to six months from the date decision is rendered and if not ordered to be served in that period will be canceled.

(b) Formal investigations will be conducted by an officer of the Company of rank not lower than Assistant Superintendent.

(c) No derogatory entries will be made upon the personal record of an RTC until the RTC has been given copy of the entry to be made and acknowledges receipt of it. If a RTC appeals such an entry and it is then denied, a notation will be made beside the entry and the appeal shall be made part of the personal record.

Rule 21. ATTENDING COURT OR INVESTIGATIONS

(a) RTCs taken away from their regular assigned duties at the request of the Company to attend court or to appear as witnesses for the Company at hearings or investigations will be furnished transportation and will be allowed compensation equal to what would have been earned had such interruption not taken place and, in addition, necessary actual expenses while away from headquarters. In the event an employee is held away from headquarters on other than a work day, the RTC will be allowed a minimum of one day's pay at the rate of time and one-half for each day so held.

(b) RTCs attending court or acting as witnesses for the Company at hearings or investigations outside of their assigned hours will be paid for the time devoted to such attendance at the rate of time and one-half.

(c) RTCs attending formal investigation charged with an offense will, if found not at fault, be paid for actual time lost at pro rata rate; if found at fault, they will not be paid for time lost. If RTCs charged with an offense are required to attend formal investigations away from headquarters, they will be furnished transportation and actual necessary expenses while away from headquarters, whether or not found at fault.

Rule 22. JURY DUTY

Employees required to serve on jury duty will be allowed their regular compensation, excluding overtime, while so serving. Employees called for jury duty will notify the Senior Carrier Officer assigned to the RTC Center and will make reasonable effort to be excused from such service.

Rule 28. TERM OF AGREEMENT

This agreement shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act as amended. Neither party to this agreement shall serve, prior to September 1, 2008 (not to become effective prior to January 1, 2009), any notice or proposal for the purpose of changing, adding to, or deleting the provisions of any agreement in effect between the parties.

Signed this 15th day of August, 2003.

Accepted for:
Illinois Central Train
Dispatchers Association:

/s/ C.D. Mason
President

/s/ W.E. Berry
Senior V.P.

/s/ J.R. Childs
Secretary/Treasurer

Accepted for:
Canadian National/Illinois Central
Railroad:

/s/ J.S. Gibbins
Director – Labor Relations

ATDA EXHIBIT 3

STB FINANCE DOCKET NO. 33556[1]

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND GRAND TRUNK WESTERN RAILROAD INCORPORATED — CONTROL — ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO, CENTRAL AND PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD COMPANY

Decision No. 37

Decided May 21, 1999

The Board approves, with certain conditions, the acquisition, by Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated (collectively, CN), of control of Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company (collectively, IC).

[1] This decision embraces: STB Finance Docket No. 33556 (Sub-No. 1), *Canadian National Railway Company, Illinois Central Railroad Company, The Kansas City Southern Railway Company, and Gateway Western Railway Company — Terminal Trackage Rights — Union Pacific Railroad Company and Norfolk & Western Railway Company*, STB Finance Docket No. 33556 (Sub-No. 2), *Responsive Application — Ontario Michigan Rail Corporation;* and STB Finance Docket No. 33556 (Sub-No. 3), *Responsive Application — Canadian Pacific Railway Company and St Lawrence & Hudson Railway Company Limited.*

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BY THE BOARD:

INTRODUCTION[2]

The CN/IC Control Application. By application[3] filed July 15, 1998, Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW),[4] and Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC),[5] seek approval under 49 U.S.C. 11321-26 for:[6] (1) the acquisition by CN of control of IC; and (2) the integration of the rail operations of CN and IC.[7]

Parties Supporting The CN/IC Control Application. The CN/IC control application has been endorsed by more than 240 parties, including more than 190 shippers. *See,* CN/IC-8 and CN/IC-31.[8]

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[2] Abbreviations frequently used in this decision are listed in Appendix A. Unless otherwise indicated, all monetary amounts referenced in this decision are stated in U.S. dollars.

[3] The CN/IC control application is docketed as STB Finance Docket No. 33556.

[4] CNR is a rail carrier. GTC, a holding company, is a wholly owned subsidiary of CNR. GTW, a rail carrier, is a wholly owned subsidiary of GTC, as are Duluth, Winnipeg and Pacific Railway Company (DWP, a rail carrier) and St. Clair Tunnel Company (SCTC, a rail carrier). CNR, GTC, and GTW, and their wholly owned subsidiaries (including DWP and SCTC, but excluding Illinois Central Corporation and its wholly owned subsidiaries), are referred to collectively as CN.

[5] IC Corp is a holding company, as is CCP Holdings, Inc. (CCPH, a wholly owned subsidiary of IC Corp.). ICR, a rail carrier, is a wholly owned subsidiary of IC Corp. Waterloo Railway Company (WRC, a rail carrier) is a wholly owned subsidiary of ICR. CCP (a rail carrier) and CRRC (also a rail carrier) are wholly owned subsidiaries of CCPH. IC Corp., ICR, CCP, and CRRC, and their wholly owned subsidiaries (including CCPH and WRC), are referred to collectively as IC.

[6] The transaction for which approval is sought (*i.e.*, the acquisition by CN of control of IC, and the integration of the rail operations of CN and IC) is variously referred to as the CN/IC control transaction and the CN/IC "merger." Because GTW and ICR are Class I railroads, this transaction is classified as a "major" transaction. *See,* 49 C.F.R 1180 2(a) (classification of 49 U.S.C. 11323 transactions).

[7] CN and IC are referred to collectively as the applicants (or, sometimes, the primary applicants). The CN/IC control application filed July 15, 1998 (CN/IC-6, -7, -8, and -9) was supplemented on August 14, 1998 (the Safety Integration Plan), September 16, 1998 (CN/IC-16, an errata filing), September 21, 1998 (the Revised Safety Integration Plan), and October 16, 1998 (CN/IC-31, supplemental support statements). *See also,* CN-1 (redacted copies of the Alliance and Access Agreements, filed February 22, 1999, by CN)

[8] *See also,* CN/IC-56B at 765-832 (statements of support by 42 additional parties, including 30 additional shippers).

The KCS Trackage Rights Application. By application (referred to as the KCS trackage rights application) filed July 15, 1998, CNR, ICR, The Kansas City Southern Railway Company, and Gateway Western Railway Company[9] seek the entry of an order under 49 U.S.C. 11102 permitting GWWR to use without restriction three connected segments of track in Springfield, IL, that total approximately 4.6 miles in length and that are owned in part by Union Pacific Railroad Company (UP) and in part by Norfolk Southern Railway Company (NS). The evidence and arguments submitted by applicants and KCS with respect to the KCS trackage rights application are summarized in Appendix B.[10]

Commenting Parties Other Than Labor. Submissions respecting the CN/IC control application and/or the KCS trackage rights application have been filed by Union Pacific Railroad Company (UP), Canadian Pacific Railway Company (CPR), St. Lawrence & Hudson Railway Company Limited (St. L&H),[11] Ontario Michigan Rail Corporation (OMR),[12] North Dakota Governor Edward T. Schafer, the North Dakota Public Service Commission (NDPSC), the North Dakota Department of Transportation (NDDOT), the North Dakota Department of Agriculture (NDDA),[13] Exxon Chemical Americas,[14] Occidental Chemical Corporation (Oxy Chem), Rubicon Inc. (Rubicon), Uniroyal Chemical

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[9] The Kansas City Southern Railway Company and Gateway Western Railway Company, and all other wholly owned (directly or indirectly) subsidiaries of Kansas City Southern Industries, Inc., are referred to collectively as KCS. Gateway Western Railway Company is referred to separately as GWWR.

[10] The KCS trackage rights application is docketed as STB Finance Docket No 33556 (Sub-No. 1). Applicants and KCS contend that the trackage rights sought in the KCS trackage rights application are "related to" the CN/IC control transaction. *See*, CN/IC-6 at 404.

[11] CPR and St. L&H filed jointly. CPR, St. L&H, Soo Line Railroad Company (Soo), and Delaware and Hudson Railway Company, Inc. (D&H), are herein referred to collectively as CP.

[12] Comments respecting the Michigan-Ontario tunnel issue raised by CP and OMR have been filed jointly by U.S. Senator Carl Levin, U.S. Representative John Conyers, Jr., and U.S Representative Carolyn Kilpatrick, and separately by John Engler (Governor of Michigan), Dennis W. Archer (Mayor of the City of Detroit, MI), Michael D. Hurst (Mayor of the City of Windsor, ON), Dewitt J. Henry (Assistant County Executive of Wayne County, MI), Paul E. Tait (Executive Director of the Southeast Michigan Council of Governments), Albert A Martin (Director of the Detroit Department of Transportation), and W. Steven Olinek (Deputy Director of the Detroit/Wayne County Port Authority).

[13] Governor Schafer, NDPSC, NDDOT, and NDDA (herein referred to collectively as North Dakota) filed *jointly*.

[14] Exxon Chemical Americas (ECA) is a division of Exxon Chemical Company (ECC), which is itself a division of Exxon Corporation, as is Exxon Company, U.S.A. (EUSA). ECA, ECC, EUSA, and Exxon Corporation are herein referred to collectively as Exxon.

Company, Inc. (Uniroyal),[15] Vulcan Chemicals (Vulcan),[16] The National Industrial Transportation League (NITL), The Fertilizer Institute (TFI),[17] American Forest & Paper Association (AF&PA), Champion International Corporation (CIC), Weldwood of Canada, Limited (Weldwood),[18] and the United States Department of Transportation (DOT). The evidence and arguments, and any related requests for affirmative relief, contained in these submissions are summarized in Appendix C.[19]

Labor Parties. Submissions respecting the CN/IC control application and/or the KCS trackage rights application have been filed by various labor parties, including the Brotherhood of Locomotive Engineers (BLE), the United Transportation Union (UTU), the American Train Dispatchers Department of the Brotherhood of Locomotive Engineers (ATDD), the International Association of Machinists and Aerospace Workers (IAM), the Transportation-Communications International Union (TCU), John D. Fitzgerald,[20] the Allied Rail Unions (ARU), and the Brotherhood of Maintenance of Way Employes (BMWE). The evidence and arguments, and any related requests for affirmative relief, contained in these submissions are summarized in Appendix D.

Additional Parties. A number of additional parties have also participated in this proceeding. Their submissions have generally been limited to expressions of either support for or opposition to the CN/IC control application, the KCS trackage rights application, or the conditions requested by one or more of the parties urging the imposition of conditions upon any approval of the CN/IC control application.

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[15] Rubicon and Uniroyal filed jointly.

[16] Vulcan Chemicals is a business unit of Vulcan Materials Company.

[17] NITL and TFI filed comments jointly Subsequently, TFI filed a letter in lieu of a brief (TFI-2, filed February 18, 1999) and NITL filed a brief (NITL-4, filed February 19, 1999). Thereafter, NITL and applicants filed a "stipulation" setting forth the terms of a settlement agreement entered into by NITL and applicants. *See*, CN/IC-65 and NITL-5 (a single pleading, filed March 17, 1999).

[18] CIC and Weldwood (herein referred to collectively as Champion) filed jointly.

[19] Comments respecting certain pricing practices assertedly used by Canadian lumber producers have been submitted by U S. Senator Mike DeWine, U.S. Representative Ralph Regula, and U.S. Representative Tom Sawyer.

[20] Mr. Fitzgerald serves as General Chairman for United Transportation Union-General Committee of Adjustment (GO-386) on lines of The Burlington Northern and Santa Fe Railway Company (BNSF).

Summary of Decision. In this decision, we are taking the following action: (1) we are approving the acquisition by CN of control of IC, and the integration of the rail operations of CN and IC, as proposed in the CN/IC control application;[21] (2) with respect to Geismar, LA, the location at which KCS will receive, under the CN/KCS Access Agreement, access to three shippers named therein, we are imposing a condition requiring applicants to grant KCS access to Rubicon, Uniroyal, and Vulcan under the same terms and conditions that will govern KCS's access to the three Geismar shippers named in the Access Agreement; (3) we are imposing a condition holding applicants to their representation to facilitate the movement of North Dakota grain to points at or near the Gulf Coast by keeping open and competitive their Chicago gateway with CP's Soo subsidiary; (4) we are imposing a condition holding CN to its commitment not to exercise unfairly any rights it may have under its Partnership Agreement with CP to oppose any proposed Detroit River Tunnel improvement project that has sufficient engineering, operational, and economic merit to attract the necessary capital for its construction without derogating the value of CN's existing investment in the CNCP Partnership; (5) we are imposing the *New York Dock* labor protective conditions[22] on the CN/IC control transaction, but we are augmenting those conditions, with respect to this transaction, so that employees who choose not to follow their work to Canada will not thereby be deemed to have forfeited their *New York Dock* protections; (6) we are imposing as conditions the commitments applicants' made to the United Transportation Union, the terms of the settlement agreements applicants reached with the Brotherhood of Maintenance of Way Employes, and the terms of the two implementing agreements applicants entered into with International Brotherhood of Electrical Workers; (7) we are imposing certain environmental mitigating conditions; (8) we are imposing an oversight condition of up to 5 years to address various matters respecting the CN/IC control transaction, including without limitation (a) concerns regarding the operation of the Alliance Agreement, particularly with respect to ongoing competition within the Baton Rouge-New Orleans corridor, (b) concerns of North Dakota grain shippers with respect to the Chicago gateway, (c) concerns with respect to investment in

[21] Applicants have made, both in their written submissions and also at the oral argument that was held on March 18, 1999, various representations. Some of these representations are specifically referenced in this decision; others, however, may not be specifically referenced. Applicants will be required to adhere to all of the representations made on the record during the course of this proceeding, whether or not such representations are specifically referenced in this decision.

[22] *New York Dock Ry. — Control — Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), *aff'd sub nom. New York Dock Ry. v. ICC*, 609 F.2d 83 (2d Cir. 1979).

and operation of the Detroit River Tunnel, (d) concerns with respect to any merger-related link to any unfair pricing practices in the lumber industry, (e) labor's concerns with respect to lack of appropriate labor protective conditions if unauthorized control of applicants and KCS should occur, and (f) any necessary monitoring of the environmental mitigating conditions we have imposed; (9) in connection with our oversight condition, we are retaining jurisdiction to impose additional remedial conditions if, and to the extent, we determine that it is necessary to impose additional remedial conditions and/or to take other actions to address the concerns that prompted the imposition of the oversight condition; (10) we are denying the KCS trackage rights application, the OMR responsive application, and the CPR/St. L&H responsive application; and (11) we are denying all other conditions heretofore sought by the various parties to this proceeding.

THE CN/IC CONTROL APPLICATION

Canadian National. CN operates approximately 14,150 route miles in Canada and approximately 1,150 route miles in the United States. CN's routes, which extend west to Prince Rupert and Vancouver, BC, east to Halifax, NS, and south to Chicago, IL, reach every major metropolitan area in Canada and the major U.S. cities of Duluth, MN/Superior, WI, Chicago, IL, Detroit, MI, and Buffalo, NY. CN's Western Service Corridor extends from Prince Rupert and Vancouver on the Pacific Coast of Canada to Thunder Bay, ON, and Chicago, IL. CN's Eastern Service Corridor extends from Halifax on the Atlantic Coast of Canada through Montreal, PQ, and Toronto, ON, and, via the St. Clair Tunnel,[23] on to Chicago, IL. Between Duluth/Superior and Chicago, CN's traffic is carried under haulage agreements over the lines of BNSF and Wisconsin Central Ltd. (WCL).

Illinois Central. IC operates approximately 3,370 route miles running north-south between Chicago, in the north, and the Gulf of Mexico, in the south, and west-east between Sioux City, IA, and Omaha, NE/Council Bluffs, IA, in the west, and Chicago, in the east. IC's main north-south route reaches every major metropolitan area on or near the Mississippi River, including Chicago, IL, St. Louis, MO, Memphis, TN, Jackson, MS, and New Orleans, LA. IC also reaches Baton Rouge, LA, and Mobile, AL. IC has efficient rail connections with all

[23] The St Clair Tunnel (so called because it crosses the St. Clair River) links Port Huron, MI, and Sarnia, ON. The St. Clair Tunnel is also known as the Sarnia Tunnel. *See*, CN/IC-56A at 152.

major railroads in the United States, particularly at Chicago, IL, Effingham, IL, Memphis, TN, Jackson, MS, Mobile, AL, New Orleans, LA, and Baton Rouge, LA.

The Combined CN/IC Network. The CN/IC control transaction, which envisions the integration of the rail operations now conducted separately by CN and IC,[24] will join the CN system with the IC system at Chicago, resulting in a combined CN/IC network of approximately 14,150 route miles in Canada and approximately 4,520 route miles in the United States. Applicants claim that, given the end-to-end nature of the CN/IC control transaction (Chicago is both the southern terminus of the CN system and the northern terminus of the IC system), the CN/IC control transaction: will create no track redundancies; will result in neither abandonments nor substantial reroutings; and will not reduce any shipper's independent rail alternatives from 3-to-2 or 2-to-1 rail carriers.

Construction Projects. Applicants indicate that, in connection with the CN/IC control transaction, they plan to construct, at Cicero, Cook County, IL (west of Chicago), a connection between a CCP line and a BRC (The Belt Railway Company of Chicago) line. Applicants claim that this connection will allow more efficient movement of traffic to/from points already served by applicants but will not extend service to any new shippers, and that, therefore, construction and operation of this connection does not require approval under 49 U.S.C. 10901. *See,* CN/IC-6 at 25 n.6. Applicants have further indicated that, while the CN/IC control application is pending, they will be upgrading an existing CN/IC connection at Harvey, Cook County, IL (south of Chicago) in order to improve the movement of traffic between CN and IC lines at that location. Applicants claim that this upgrade is one that CN and IC have long been planning and is not dependent on the CN/IC control transaction, and that, therefore, construction and operation of this upgrade does not require approval under 49 U.S.C. 10901. *See,* CN/IC-7 at 113.

Public Interest Justifications. Applicants contend that the CN/IC control transaction, by uniting the east-west CN system (which extends between the Atlantic and the Pacific) with the north-south IC system (which extends between Chicago and the Gulf of Mexico): will create the first integrated, three-coast, single-line railroad in North America; will enable the combined CN/IC system

[24] Applicants have indicated, however, that they intend to preserve IC's separate corporate identity. *See,* CN/IC-6 at 119.

to provide more competitive service; will intensify competition along the increasingly significant north-south traffic corridors linking U.S. markets to their counterparts in Canada and Mexico; will meet shipper needs for an improved rail infrastructure to handle the rapidly growing north-south trade flows stimulated by the North American Free Trade Agreement (NAFTA); will result in strengthened competition among rail and motor carriers in every market and at every gateway served by the combined CN/IC; and will improve the quality of rail service available to the public.[25] Applicants further contend that the CN/IC control transaction will enable the combined CN/IC system to provide its customers: new and improved through train service and extended single-line service;[26] increased routing options and gateway choices;[27] improved coordination; more efficient car and train handling; faster and more reliable deliveries; and better utilization of car and locomotive equipment.[28] Applicants claim that the CN/IC control transaction will generate, each year, $137.4 million in total quantifiable public benefits (*i.e.*, operating efficiencies and cost savings, *see*, CN/IC-56A at 534-36) as well as substantial unquantifiable public benefits (*e.g.*, more competitive options in the transportation marketplace).[29]

Tender Offer, Merger, and Voting Trust. CNR has already acquired, at a cost of approximately $1.821 billion[30] and pursuant to a series of

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[25] Applicants indicate: that existing shipper contracts with CN and IC will be honored by the combined CN/IC and will not be altered by the terms of the CN/IC control transaction, *see*, CN/IC-6 at 140; and that rail passenger operations will not be significantly affected by the CN/IC control transaction, *see*, CN/IC-7 at 112-13 and 162-69

[26] Applicants claim that a core element of the customer benefits to be derived from the CN/IC control transaction will be extended single-line service and the consequent expanded market reach, and enhanced length-of-haul efficiencies.

[27] Applicants, which intend to provide shippers with a choice of St. Louis, Memphis, and New Orleans for interchange with UP, BNSF, NS, and CSX Transportation, Inc. (CSX), claim that the new routing options made possible by the CN/IC control transaction will intensify competition: with existing interline routes involving CP, UP, BNSF, and CSX; and also with the single-line routes of NS and CSX.

[28] Applicants claim that the CN/IC control transaction will enable the combined CN/IC system to reduce congestion in Chicago by using more run-through trains and by blocking more trains to the north and south of that rail hub.

[29] Applicants claim that, because there are few redundancies between the CN and IC systems, the benefits of integrating CN and IC rail operations flow largely from the single-line service, the improved coordination, and the greater length-of-haul efficiencies that are possible with a single operator.

[30] The $1.821 billion figure represents the out-of-pocket cost (*i.e.*, $39 per share, plus related fees and expenses) of acquisition of the approximately 75% of the then outstanding IC Corp.

(continued...)

transactions[31] that included a cash tender offer consummated on March 14, 1998,[32] and a merger consummated on June 4, 1998,[33] indirect beneficial ownership of 100% of the common stock of IC Corp. The IC Corp. common stock thus acquired by CNR has been held, and is now being held, in a voting trust pursuant to a voting trust agreement[34] that provides that the voting trustee:[35] will act by written consent or will vote all IC Corp. stock held by the voting trust in favor of any proposal necessary to effectuate the Merger Agreement, and, so long as the Merger Agreement is in effect, against any other proposed merger, business combination, or similar transaction involving IC Corp.; and will generally, with respect to other matters (including the election or removal of directors),[36] vote the IC Corp. stock held by the voting trust in the voting trustee's sole discretion, unless the holder(s) of trust certificate(s), with the prior written approval of the Board, directs the voting trustee as to any such vote.[37] The voting trust agreement further provides, in essence, that the voting trust shall cease and come to an end if the CN/IC control transaction is approved by the Board and implemented by CNR.[38] CNR has indicated that it intends to acquire the IC Corp. stock from the voting trust and to exercise control over IC as

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[30](...continued)
common stock that was acquired in connection with the cash tender offer consummated on March 14, 1998. The $1.821 billion figure does not include the non-cash cost of acquisition of (*i.e.*, the "cost" of the approximately 10.1 million CNR common shares given in exchange for) the remaining 25% of IC Corp. common stock that was acquired in connection with the merger consummated on June 4, 1998.

[31] These transactions were provided for in the Agreement and Plan of Merger (as subsequently amended, the Merger Agreement) entered into on February 10, 1998, by CNR, Blackhawk Merger Sub, Inc. (Merger Sub, an indirect wholly owned CNR subsidiary), and IC Corp. *See*, CN/IC-9 at 1-104 (the Merger Agreement) and at 105-08 (Amendment No. 1 to the Merger Agreement).

[32] The tender offer resulted in the acquisition, by Merger Sub, of 46,051,761 shares of IC Corp. common stock (approximately 75% of the then outstanding IC Corp. common stock) at a price of $39.00 per share.

[33] The merger was between IC Corp. and Merger Sub, with IC Corp. being the surviving corporation. In connection with the merger, there was an exchange of the remaining 25% of IC Corp. common stock for approximately 10.1 million common shares of CNR (which represented 10.3% of CNR's post-merger outstanding common shares on a fully diluted basis).

[34] *See*, CN/IC-9 at 109-21 (the voting trust agreement).

[35] The voting trustee is The Bank of New York.

[36] Applicants have indicated: that ICR, CCP, and CRRC remain under the control of their respective boards of directors; and that each present ICR, CCP, and CRRC director either was elected prior to the establishment of the voting trust or was appointed by directors who themselves were elected prior to the establishment of the voting trust.

[37] The trust certificate for all IC Corp. stock held by the voting trust is currently held by GTC.

[38] *See*, CN/IC-9 at 112-13.

remain under our oversight until safely completed. Further, as detailed below, our Section of Environmental Analysis (SEA) prepared a thorough Environmental Assessment (EA) in which SEA identified hazardous materials transport as the only aspect of the transaction with potentially significant adverse environmental impacts. SEA believes that, with its recommended conditions, which address hazardous materials transportation and related impacts to environmental justice populations, this transaction will not result in significant environmental impacts. We agree and, accordingly, are imposing those conditions as well as the other environmental conditions that SEA recommends.

The net impact of this merger upon the number of employees of these carriers in the United States should be positive. Applicants anticipate, however, the abolishment of 311 positions, and the transfer of 138 positions, as a result of this transaction. Applicants note that they should be able to achieve most of the reduction in positions through attrition over the 3-year implementation period. At the same time, the transaction will result in the creation over the next 3 years of approximately 384 positions, mainly to handle increased traffic flows. All employees who are adversely affected by the transaction will be protected by the *New York Dock* conditions, as augmented in this decision.

We have also carefully examined the impact of this transaction on the ability of the combined carriers to meet their financial obligations, pay their fixed charges, and continue to provide quality service to the shipping public. Traffic and revenues will increase substantially due both to the Alliance Agreement and to this transaction. Even without these traffic increases and savings derived from operating synergies, applicants should have no difficulty meeting their financial obligations and continuing to provide quality service. Further, the terms of the acquisition agreement and transactions are just and reasonable to shareholders.

In sum, this transaction meets the public interest test for approval under section 11324. As conditioned, the merger should result in no significant competitive, operational, or environmental problems. Its impact on rail employees should be relatively small, and will be adequately mitigated by our augmented *New York Dock* conditions. The transaction will make possible significantly improved single-line service for many shippers, and will result in merger synergies that should allow the carriers to provide service at lower cost. A substantial portion of these savings should be passed along to shippers in terms of reduced rates or improved service. Finally, the ability of these carriers to provide quality service will not be impaired, and should be enhanced.

LABOR MATTERS. Our public interest analysis includes consideration of the interests of carrier employees affected by the proposed transaction. 49 U.S.C. 11324(b)(4); *Norfolk & Western v. ATDA*, 499 U.S. 117, 120 (1991). Applicants have shown that the net impact of this transaction on rail labor should be positive, as the merger will result in a net increase in union jobs. Unions representing more than half of applicants' organized employees (UTU, BMWE, International Brotherhood of Electrical Workers, and Brotherhood of Railway Signalmen) have reached agreement and now support the application.[96] Applicants acknowledge that the transaction will have limited adverse consequences for employees for particular crafts and in certain areas. Applicants anticipate abolishment of 311 positions, and the transfer of 138 positions. They indicate that they should be able to achieve most of this reduction in positions through attrition over the 3-year implementation period. Offsetting these losses, the transaction will also result in the creation over the next 3 years of approximately 384 positions, mainly operating personnel to handle increased traffic flows. These basic projections are unchallenged.

Having weighed the impact upon carrier employees against the other public benefits that should result from the transaction, we conclude that the impacts on employees do not require us to deny approval of the transaction. This is particularly clear when our mitigation of these impacts with the labor protective conditions we are imposing is taken into account.

The basic framework for mitigating the labor impacts of rail consolidations is embodied in the *New York Dock* conditions. They provide both substantive benefits for affected employees (up to 6 years of full wages, moving allowances, preferential hiring, and other benefits) and procedures (negotiation, or, if necessary, arbitration) for resolving disputes regarding implementation of particular transactions. *New York Dock*, 360 I.C.C. at 84-90. We may tailor employee protective conditions to the special circumstances of a particular case. This is done where unusual circumstances require more stringent protection than the level mandated in our usual conditions. As specifically indicated below, we will grant certain requests to modify or clarify our basic conditions.[97]

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[96] According to a recent CN press release, the applicants also have negotiated an implementing agreement with the Brotherhood of Railway Carmen Division of TCU, resulting in applicants' having now signed implementing agreements (in one case, a letter of commitment) with unions representing 67% of the organized work force of CN and IC in the United States.

[97] BLE has made allegations about premature consummation. We note that all employees are protected against adverse consequences of any actions taken in anticipation of the merger by Article I, section 10 of *New York Dock*.

a. The implementing agreement process. A number of parties have raised questions about the implementing agreement process. Under *New York Dock*, the carriers and employees must arrive at an implementing agreement before any changes in operations affecting employees may occur. If timely agreement cannot be reached, these matters are subject to binding arbitration. As part of this process, under the law as interpreted by the Supreme Court, collective bargaining agreement (CBA) terms may be modified as necessary to carry out a transaction in the public interest. *Norfolk & W. Ry. v American Train Dispatchers Ass'n*, 499 U.S. 117 (1991) (*Dispatchers*).

In approving a rail merger or consolidation such as this, we have never decided in advance precisely what CBA changes, if any, will be required to carry out the transaction, and we will not do so here.[98] As we recognized in *Conrail Merger*, and as DOT urges here, those details are best left to the process of negotiation and, if necessary, arbitration under the *New York Dock* procedures. We will resolve any labor implementing agreement issues only as a last resort, giving deference to the arbitrator. Specifically, our approval of this transaction does not constitute a finding that any override of a CBA is necessary to carry out the transaction; rather, such matters should be left to negotiation and arbitration.

We admonish the parties to bargain in good faith to embody implementing agreements in CBAs rather than having such agreements arbitrally imposed. Good faith bargaining has always been an integral component of the *New York Dock* process. Applicants conceded at oral argument that the arbitrator, and the Board, if necessary, could properly take notice of any abuse of process in their deliberations.

As noted previously, unions representing at least more than 50% of applicants' workforce have reached agreement with applicants and now support the transaction.[99] The increasing return to negotiated agreements is one of the most positive developments in the consolidations we have recently approved, and we intend to encourage the continuation of that trend.

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[98] Several unions have asked that we make a declaration that it would never be appropriate for an arbitrator to override an entire CBA, and impose another one. We caution the arbitrators that, under the law as limited recently by the Board, they are constrained to make only those CBA changes that are necessary to permit the carrying out of the transaction *CSX Corp — Control — Chessie System, Inc. et al.*, 3 S.T.B. 701 (1998) (*Carmen III*). This decision limits any CBA changes to those made by arbitrators during the period 1940 - 1980

[99] To the extent that these unions and applicants have asked us to impose their agreements as conditions, we will do so. *See*, UTU-10 and BMWE-6 (discussed in detail in Appendix D). *See also*, IBEW-8, filed April 22, 1999 (request by IBEW, made with the consent of applicants, for adoption of the two implementing agreements entered into by IBEW and applicants).

Various unions claim that Article I, section 3 of *New York Dock* precludes modification of certain benefits they received as the result of agreements implementing prior mergers approved by the ICC. ATDD stresses that certain ATDD employees enjoy "lifetime protection" as the result of a merger approved by the ICC in 1979, and subsequent CBA modifications made in 1996.[100] But these issues are not yet ripe for us to decide here. First applicants and the unions need to negotiate an implementing agreement. Only if that process fails, and applicants claim that changes need to be made in these CBAs, will it be necessary for an arbitrator to rule on these issues in the first instance. And those arbitrators will be constrained in this process not to change any protected "rights, privileges, and benefits," and only to make those changes that are necessary to carry out this transaction as significantly limited by the Board in *Carmen III*. *See, generally, Carmen III*.[101]

The ICC stated in *Railroad Consolidation Procedures*, 363 I.C.C. at 793, that, unless unusual circumstances make more stringent protection necessary, it would provide only the protections mandated by section 11347 (now section 11326). Here, however, TCU and others have presented valid concerns that require us to clarify or modify the application of our conditions as they relate to employees whose work may be transferred to Canada as the result of this transaction.

A basic part of the bargain embodied in the Washington Job Protection Agreement, upon which the *New York Dock* conditions are based, is that rail carriers are permitted to move employees from one work site to another in order to achieve the benefits of a merger transaction. Such displacements do result in hardships for employees whenever they are required to move their place of residence, and *New York Dock* thus compensates the employee for the cost of the move. Ordinarily, applicants are not required to make protective payments to these employees who are offered continued employment, but decline to take advantage of it.

That being said, we do not believe that it would be appropriate for us to require employees to move to Canada or else forfeit their *New York Dock* protections. Such a move could be impeded by Canadian immigration laws, and could create unusually harsh dislocation problems for the families of

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[100] It appears that the particular benefits that concern these unions are actually included in CBAs negotiated as part of the implementing process or thereafter.

[101] As noted, due to the end-to-end nature of the proposed combination, applicants themselves have acknowledged that implementation of the CN/IC control transaction will require at the most only modest adjustments to existing CBAs.

these employees. We will not construe our conditions to have this effect.[102] *Cf. Independent Union of Flight Attendants v. Pan Am. World Airways*, 923 F.2d 678 (9th Cir. 1991) (Railway Labor Act (RLA) does not apply extraterritorially); *Great Northern Pac. — Merger — Great Northern Ry.*, 6 I.C.C.2d 919 (1990). Instead, where work is moved to Canada, employees cannot be required to follow their work to Canada or else be deemed to have forfeited their *New York Dock* benefits.

b. Protection for non-applicant employees. TCU has asked that we impose *New York Dock* conditions for the benefit of KCS employees under the theory that the transaction before us is really a three-carrier transaction involving KCS, IC, and CN. UTU GCA-386 has asked us to extend *New York Dock* to the employees of a non-applicant carrier, BNSF. UTU GCA-386 claims that BNSF employees will be harmed because applicants will divert traffic away from BNSF, and that there is an inadequate record on this issue because BNSF has withdrawn from the case.

The ICC, with the approval of the courts, consistently ruled that the employees of a non-applicant carrier, or a carrier not directly involved in a transaction governed by 49 U.S.C. 11323, are not entitled to labor protection under 49 U.S.C. 11326.[103] In essence, labor protection was intended to cushion the impact on employees of merger-related restructuring of the carriers for which they work, not to insulate employees from competitive impacts of mergers not involving their employers.

As discussed in detail above in the "Alliance Agreement" section, this is not a three-carrier control transaction. Nevertheless, TCU objects that, under the Alliance Agreement, these three carriers have agreed to consider the coordination of work that is now performed by the employees of each of the three carriers pursuant to their respective CBAs. This may be so, but we are not here approving the Alliance Agreement, nor are we approving any consolidation of KCS and the other two carriers, or of any of their employee functions. This

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[102] Although applicants noted at oral argument that *New York Dock* protections would not be forfeited if an employee could show, as a matter of fact, that he or she was precluded from moving to Canada by Canadian immigration law, we do not believe that employees should be required to make that showing.

[103] *Crounse Corp. v. ICC*, 781 F.2d 1176, 1192-93 (6th Cir. 1986), *cert. denied*, 479 U.S. 890 (1986); *Missouri-Kansas-Texas R. Co. v. United States*, 632 F.2d 392, 410-12 (5th Cir. 1980), *cert. denied*, 451 U.S. 1017 (1981); *Lamoille Valley R. Co. v. ICC*, 711 F.2d 295, 323-24 (D.C. Cir. 1983); *Southern Pacific Transp. Co. v. ICC*, 736 F.2d 708, 725 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985); and *Railway Labor Executives' Ass'n v. ICC*, 914 F.2d 276, 280-81 (D.C. Cir. 1990).

ATDA EXHIBIT 4

ATTACHMENT A

NEW YORK DOCK CONDITIONS

Labor protective conditions to be imposed in railroad transactions pursuant to 49 U.S.C. 11343 et seq. (formerly sections 5(2) and 5(3) of the Interstate Commerce Act), except for trackage rights and lease proposals which are being considered elsewhere, are as follows:

ARTICLE I

1. Definitions. – (a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May 1936.

2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collecting bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

3. Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both this Appendix and

some other job security or other protective conditions or arrangements, he shall elect between the benefits under this Appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits; and, provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

4. Notice and Agreement or Decision – (a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(b) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

5. Displacement allowances – (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

6. Dismissal allowances. – (a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earning of such employee in employment other than with the railroad, and the benefits received.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place or residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement.

7. Separation allowance. - A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump sum payment computed in accordance with section 9 of the Washington Job Protection Agreement of May 1936.

8. Fringe benefits. - No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the railroad in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

9. Moving expenses. - Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representative; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed with three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provision of this section unless such claim is presented to railroad within 90 days after the date on which the expenses where incurred.

10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.

11. Arbitration of disputes. – (a) In the event the railroad and its employees or their authorized representative cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix except section 4 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding, upon the parties.

(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event

the railroad will be entitled to appoint additional representatives so as to equal the number of labor organization representatives.

(c) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

12. Losses from home removal. – (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the transaction and is therefore required to move his place of residence;

(i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

(b) Changes in place of residence which are not the result of a transaction shall not be considered to be within the purview of this section.

(c) No claim for loss shall be paid under the provisions of this section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or their representatives and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner. One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

ARTICLE II

1. Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, be grated priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on the railroad which he is, or by training or re-training physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

2. In the event such training or re-training is requested by such employee, the railroad shall provide for such training or re-training at no cost to the employee.

3. If such a terminated or furloughed employee who had made a request under section 1 or 2 of the article II fails without good cause within 10 calendar days to accept an offer of a position comparable to that which he held when terminated or furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

ARTICLE III

Subject to this appendix, as if employees of railroad, shall be employees, if affected by a transaction, of separately incorporated terminal companies which are owned (in whole or in part) or used by railroad and employees of any other enterprise within the definition of common carrier by railroad in section 1(3) of part I of the Interstate Commerce Act, as amended, in which railroad has an interest, to which railroad provides facilities, or with which railroad contracts for use of facilities, or the facilities of which railroad otherwise uses; except that the provisions of this appendix shall be suspended with respect to each such employee until and unless he applies for employment with each owning carrier and each using carrier; provided that said carriers shall establish one convenient central location for each terminal or other enterprise for receipt of one such application which will be effective as to all said carriers and railroad shall notify such employees of this requirement and of the location for receipt of the application. Such employees shall not be entitled to any of the benefits of this appendix in the case of failure, without good cause, to accept comparable employment, which does not require a change in place of residence, under the same conditions as apply to other employees under this appendix, with any carrier for which application for employment has been made in accordance with this section.

ARTICLE IV

Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between the railroad and an employee not represented by a labor organization with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within 30 days after the dispute arises, either party may refer the dispute to arbitration.

ARTICLE V

1. It is the intent of this appendix to provide employee protections which are not less than the benefits established under 49 USC 11347 before February 5, 1976, and under section 565 of title 45. In so doing, changes in wording and organization from arrangements earlier developed under those sections have been necessary to make such benefits applicable to transactions as defined in article 1 of this appendix. In making such changes, it is not the intent of this appendix to diminish such benefits. Thus, the terms of this appendix are to be resolved in favor of this intent to provide employee protections and benefits no less than those established under 49 USC 11347 before February 5, 1976 and under section 565 of title 45.

2. In the event any provision of this appendix is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this appendix shall not be affected.

BEFORE AN ARBITRATOR ACTING PURSUANT TO THE NEW YORK DOCK CONDITIONS ARTICLE I, SECTION 4

Don A. Hampton, Arbitrator

In the Matter of:

SURFACE TRANSPORTATION BOARD Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY, GRAND TRUNK CORPORATION, GRAND TRUNK WESTERN RAILROAD COMPANY INCORPORATED – CONTROL – ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, etc.

Dispute Over Transfer of Train Dispatching Work

EXHIBITS 5-16 TO ATDA

PRE-HEARING SUBMISSION

LIST OF ATDA EXHIBITS

NUMBER	DESCRIPTION
1	ATDA-GTW collective bargaining agreement
2	ICTDA-IC collective bargaining agreement
3	*Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated – Control – Illinois Central Corporation, Illinois Central Railroad Company, etc.*, 4 STB 122 (1999) (Decision No. 37) [RELEVANT EXCERPTS]
4	The *New York Dock* Conditions
5	Carrier's February 4, 2009 *New York Dock* Notice
6	Carrier's April 16, 2009 Opening Proposal
7	ATDA's Counterproposal
8	Carrier's Response/Final Offer
9	ATDA's Second Counterproposal/Final Offer
10	*Chicago and North Western Transportation Company - Abandonment - Near Dubuque and Oelwein, IA*, 3 I.C.C.2d 729 (1987) ("*Lace Curtain*"), *affd. sub nom. Intl. Brotherhood of Electrical Workers v. ICC*, 862 F.2d 330 (D.C. Cir. 1988)
11	Cost of Living Comparison
12	Forty-second Annual Corporate Relocation Survey, Atlas World Group
13	ATDA/CN/Duluth, Missabe and Iron Range Railway Company Implementing Agreement
14	*Burlington Northern Santa Fe Railway Company and Brotherhood of Maintenance of Way Employes*, F.D. No. 32549 (Sickles, March 25, 1999)
15	ATDA/CSXT Separation Allowance Agreement
16	*Consolidated Rail Corporation and Monongahela Railway Company and UTU*, F.D. No. 31875 (LaRocco 1992)

ATDA EXHIBIT 5

Labor Relations

17641 S Ashland
Homewood, IL USA
60477

Date	February 3, 2009		
To:	Leo McCann David Volz Joe Mason	*From:*	Cathy Cortez
Fax No.:	216.241.6286 210.650.3407 248.740.6044 (c/o C Widger)	*Fax No.:*	708.332 6737
Tel.:		*Tel :*	708.332.3570

Number of pages, including this one: 3

CONFIDENTIAL

This facsimile (including all accompanying documents) may contain confidential information and may be protected by solicitor-client privilege. It is intended for use by the person to whom it is addressed only

Any other use, distribution or copying is strictly prohibited. If received in error, notify us immediately by telephone (collect) and return original transmission by mail without making a copy

Please call with any questions or issues. Thank you.

NOTE: CATHY WIDGER - CAN YOU ENSURE THIS IS POSTED AT TROY FOR ALL RTC'S?

THANKS -

Labor Relations Department

17641 S. Ashland Avenue
Homewood, Illinois 60430

VIA FACSIMILE

February 3, 2009

Mr. J W. Mason
General Chairman
American Train Dispatchers Association
4689 Hatchery
Waterford, MI 48329

Mr. Mason:

Enclosed is a self-explanatory notice that has been posted for the information of interested employees in connection with the acquisition of Illinois Central by Canadian National Railway (STB Finance Docket 33556).

We propose an initial meeting be held at 11:00 a.m. on February 5, 2009, at our Troy office located at 2800 Livernois Road, Troy, Michigan, for the purpose of reaching the necessary implementing agreement.

Please advise if you are available to meet at the above time and location.

Sincerely,

C.K. Cortez
Senior Manager – Labor Relations

GRAND TRUNK WESTERN RAILROAD INCORPORATED
ILLINOIS CENTRAL RAILROAD COMPANY

Notice to Employees

February 3, 2009

The Surface Transportation Board, in a Decision dated May 25, 1999, approved the acquisition by Canadian National Railway Company ("CNR"), Grand Trunk Corporation ("GTC"), and Grand Trunk Western Railroad Incorporated ("GTW"), of Illinois Central Corporation ("IC Corp."), Illinois Central Railroad Company ("ICR"), Chicago, Central & Pacific Railroad Company ("CCP") and Cedar River Railroad Company ("CRRC") (Finance Docket 33556) subject to the conditions for the protection of railroad employees described in New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979).

The acquisition enables the rail system to provide more efficient, more reliable, and more competitive rail service. The acquisition also responds directly to shipper requirements for improved rail infrastructure to handle the rapidly growing north-south trade flows stimulated by NAFTA.

To achieve the efficiencies of the acquisition, it is necessary to consolidate the train dispatching operation of the Grand Trunk Western ("GTW") and the Illinois Central ("IC") into one location. The consolidation will result in the abolishment of sixteen (16) GTW dispatcher positions at Troy, Michigan. Ten (10) dispatcher positions will be established at Homewood, Illinois. The reason for the consolidation is to provide increased efficiency and better utilization of the dispatchers at Homewood.

Employees who are adversely affected by this transaction will be entitled to the employee protective conditions described in New York Dock Railway – Control – Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979).

This notice is served pursuant to Article I, Section 4 of the protective conditions.

C.K. Cortez
Senior Manager - Labor Relations

ATDA EXHIBIT 6

Agreement between

GRAND TRUNK WESTERN RAILROAD COMPANY
ILLINOIS CENTRAL RAILROAD COMPANY

And their employees represented by

AMERICAN TRAIN DISPATCHERS ASSOCIATION
ILLINOIS CENTRAL TRAIN DISPATCHERS ASSOCIATION

WHEREAS, the Surface Transportation Board, in decisions dated May 25, 1999, (STB Finance Docket No. 33556), approved the acquisition by Canadian National Railway Company ("CNR"), Grand Trunk Corporation ("GTC"), and Grand Trunk Western Railroad Incorporated ("GTW"), of Illinois Central Corporation ("IC Corp."), Illinois Central Railroad Company ("IC"), Chicago, Central & Pacific Railroad Company ("CCP") and Cedar River Railroad Company ("CRRC") subject to the conditions for the protection of railroad employees described in New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), and

WHEREAS, on February 3, 2009 the GTW and IC served notice under Article I, Section 4 of the Protective Conditions of its intent to change operations as a result of the above transaction, and

WHEREAS, the parties to this agreement agree that this Implementing Agreement, made by and between the GTW and IC and the American Train Dispatchers Association ("ATDA") and the Illinois Central Train Dispatchers Association ("ICTDA") on behalf of employees represented by each respective to establish procedures for the transfer of work and employees whose positions will be abolished on the GTW, provides the necessary protection of employees,

IT IS AGREED:

1. On the effective date of this agreement, sixteen (16) GTW Dispatcher positions, identified in Attachment C, subject to the agreement between the GTW and the ATDA will be abolished.

2. No less than ten (10) days prior to the effective date of this agreement, the GTW will post notices at Troy for ten (10) ICTDA dispatcher positions at Homewood.

3. GTW dispatchers must submit their application for the above options or state their intent to exercise their seniority to another position under the GTW/TCIU Agreement, in writing, to the individual designated by the carrier, with copy to Local Chairman, within five (5) days from date of posting. Employees must select their option(s) in order of preference. Employee elections identified on their application will be considered irrevocable. Failure to submit an application, or identify options, will result in the employee being considered as having elected to exercise seniority under existing GTW/TCIU Agreements.]. For those that have Seniority.

4. Assignments and awarding of positions shall be made in seniority order. In the event all positions provided in paragraph 2 are selected by dispatchers, clerical positions, under the GTW/TCIU agreement will be made available to the remaining employees on the GTW/ATDA seniority rosters.

5. Employees transferring from Troy to Homewood under provisions of this Agreement shall become IC employees and be subject to the agreement in effect between the ICTDA and IC covering wages, rules and working conditions, subject to the modifications contained herein. On the effective

date of this Agreement, the employees transferred under Paragraph 4 shall be credited with prior GTW service on the IC for benefits and vacation purposes.

6. Employees awarded positions transferred under the provisions of Paragraph 4 and IC employees will retain prior rights to those positions based upon their relative seniority standing as transferred. These rights will only terminate in the event that 1) the transferring GTW employee successfully bids to any other clerical assignment available under the terms of the CBA or, 2) the employee resigns, retires, becomes disabled, is dismissed from service or is promoted. Once a position established under Paragraph 2 is no longer subject to prior rights under this paragraph, it will, if necessary, be filled in accordance with the ICTDA Agreement.

7. Employees awarded positions under Paragraph 4 will forfeit all GTW seniority and their seniority will be dovetailed with the seniority dates held by employees on the IC. In the event two or more employees from the different seniority rosters have identical seniority dates, the employees shall be ranked first by service dates, then, if service dates are the same, by date of birth, the oldest employee to be designated the senior ranking. This shall not affect the respective ranking of employees with identical seniority dates on their former seniority roster.

8. The employee protective benefits and conditions as set forth in the New York Dock conditions, attached hereto as Attachment "A," shall be applicable to this transaction. There shall be no duplication of benefits by an employee under this agreement and any other agreement or protective arrangement. It is

understood that if active and regularly assigned dispatchers at Troy decline to apply for any of the ten (10) dispatcher positions at Homewood or if any of the ten (10) positions are left unfilled, then such employees will not be considered deprived of employment and shall not be entitled to the protective benefits contained in the New York Dock conditions as a result of this transaction.

9. Any employee determined to be a "displaced" or "dismissed" employee as a result of this transaction, who is otherwise eligible for protective benefits and conditions under some other job security agreement, conditions or arrangements shall elect in writing within sixty (60) days of being affected between the protective benefits and conditions of this agreement and the protective benefits and conditions under such other arrangement by giving written notification to the carrier's designated individual, with copy of such election to the employee's General Chairman. Should any employee fail to make an election of benefits during the period set forth in this paragraph, such employee shall be considered as electing the protective benefits and conditions of this agreement.

10. Nothing contained herein shall be construed as depriving any employee of any rights or benefits or eliminating any obligation which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both New York Dock and some other job security or other protective conditions or arrangements, the employee shall elect between the benefits under New York Dock and similar benefits under such other arrangement and, for so long as the

employee continues to receive such benefits under the provisions which the employee so elects, the employee shall not be entitled to the same type of benefit (regardless of whether or not such benefit is duplicative) under the provisions which he does not so elect; and, provided further, that after expiration of the period for which such employee is entitled to protection under that arrangement which the employee so elects, the employee may then be entitled to protection under the other arrangement for the remainder, if any, of the protective period under that arrangement. There shall be no duplication or pyramiding of benefits to any employees, and the benefits under New York Dock, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits.

11. Each "dismissed employee" shall provide the carrier's designated individual the following information for the preceding month in which such employee is entitled to benefits no later than the tenth (10th) day of each subsequent month on a standard form provided by the carrier.

(a) The day(s) claimed by such employee under any unemployment insurance act.

(b) The day(s) claimed by such employee worked in other employment, the name(s) and address(es) of the employer(s) and the gross earnings made by the dismissed employee in such other employment.

(c) The day(s) for which the employee was not available for service due to illness, injury or other reasons for which the employee could not perform service and the employee received sickness benefits.

12. If the "dismissed employee" referred to herein has nothing to report account not being entitled to benefits under any unemployment insurance law, having no earnings from any other employment, and was available for work the entire month, such employee shall submit, on a form provided by the carrier, within the time period provided for in paragraph 11, the form annotated "Nothing to Report."

13. The failure of any employee to provide the information as required in paragraphs 11 and 12 shall result in the withholding of all protective benefits during the month covered by such information pending receipt by the carrier of such information from the employee. No claim for protective benefits shall be honored beyond sixty (60) days from the time specified in paragraph 11, except in circumstances beyond the individual's control.

14. The carrier will make payment of the protective benefits within sixty (60) days of receipt and verification of the information required in paragraphs 11and 12.

15. Employees transferred from Troy to Homewood under provisions of this agreement may at their option and in lieu of any and all benefits provided by Sections 9 and 12 of the New York Dock conditions (Attachment "A"), be afforded special options as provided in Attachment "B", if eligible. Such election shall be made at the time of transfer.

16. This agreement shall constitute the required agreement, as stipulated in Article I, Section 4 of the protective conditions, for the transfer of work as indicated in the notice of February 3, 2009. The parties understand that in the future, other implementing agreements may be necessary to carry out the financial transaction

set forth in STB Finance Docket No. 33556. The parties understand that such agreements are subject to notice, negotiation and possible arbitration under Article I, Section 4 of the New York Dock conditions.

17. Any dispute arising out of this Implementing Agreement and the Attachments will be handled by the General Chairman with the officer designated to receive such claims and grievances for the Company. All unresolved disputes will be disposed of in accordance with the applicable provisions of New York Dock.

18. The provisions of this Implementing Agreement have been designed to address a particular situation. Therefore, the provisions of this Implementing Agreement and the Attachments are without precedent or prejudice to the position of either party and shall not be referred to in any other case.

19. This Agreement shall be effective upon not less than ten (10) days written notice from the company to the organization, but not later than May 3, 2009.

Signed this th day of , 2009 at Homewood, Illinois.

For: GRAND TRUNK WESTERN RAILROAD COMPANY; ILLINOIS CENTRAL

For: AMERICAN TRAIN DISPATCHERS ASSOCIATION

By: _____

By: _____

By: _____

Approved: _____

For: ILLINOIS CENTRAL TRAIN DISPATCHERS ASSOCIATION

By: _____

By: _____

Approved: _____

NOTE: Attachment A Reproduction of *NYD Conditions* omitted.

ATTACHMENT B

In lieu of the benefits provided for in Sections 9 and 12 of the New York Dock conditions, employees who accept positions at Homewood may elect, at the time of their transfer, to accept one of the relocation packages as provided below. All transferring employees must select either relocation option (1) or (2), payments subject to taxation:

OPTION (1) GTW Employees who relocate their primary residence to the Homewood area will receive:

After fifteen (15) working days	$2,000
After sixty (60) working days	$2,000
After six (6) months	$2,000
After one (1) year	$2,000
After fifteen (15) months	$2,000

To qualify for the above payments, an employee must be in active service at Homewood at the time such payment is due.

GTW employees who relocate their primary residence and select the benefits of this Attachment at the time of their transfer will be entitled to an additional $10,000 upon proof of sale, at fair market value, of their primary residence in the Troy area, and proof of relocation to a new primary residence within a reasonable distance of Homewood. To qualify for the benefits of this paragraph, relocation of primary residence, including both sale and relocation, must occur within two (2) years of the date of transfer.

OPTION (2) GTW Employees who rent in the Homewood area:

GTW employees who elect to rent or lease in the Homewood area, will be reimbursed for actual out-of-pocket costs of a rental accommodation, up to One Thousand Three Hundred Dollars ($1,300) per month ("rent reimbursement"). This rent reimbursement is to be used solely for the accommodations that are necessary in order for the employee to hold a Dispatcher position to Homewood, Illinois and is not intended to, and cannot, be used for any other purpose, including but not limited to enrolling children in school, paying expenses for your present residence (or any other residence), or paying for any additional costs that might incur as a result of relocating.

1. Rent reimbursement includes **only** the following items: monthly rent; the cost of a basic cable plan; monthly gas (heat) bill; monthly electric bill; and parking at your residence.
2. Rent reimbursement will be provided for only those expenses actually incurred and only up to the amount provided for in paragraph 1. The employee must provide proof that you incurred the expense in a format acceptable to the Company prior to being reimbursed for any expense. Examples of acceptable forms of proof include a signed lease agreement, monthly utility bills issued by the service provider for gas, light, basic cable, and parking. The Company reserves the right to request the employee provide a receipt for proof that the expense has been paid.
3. This is a taxable benefit to the employee, which is subject to taxation as ordinary income. The Company has agreed to pay the taxes for the rent reimbursement to the extent that it is considered ordinary income and

subject to taxation. The employee will remain responsible for all other tax liability. All rent reimbursement and taxes paid by the Company will be reported on the employee's statement of earnings.

4. Rent reimbursement will be provided to the employee for a period of time not to exceed two (2) years, or when one of the following events occur, whichever is sooner: the employee ceases to incur such expense; the employee violates any term of this relocation package; the employee's employment with the Company ends, whether voluntarily or otherwise; or the employee voluntarily chooses to transfer to another position within the Company.
5. Rent reimbursement will be offset if two or more employees rent the same living space.

ATTACHMENT C

	Last Name	Initials	Seniority
1.	Gebard	D.V.	4/19/1977
2.	Facknitz	E.A.	5/22/1977
3.	Campbell	L.P.	12/19/1981
4.	McAfee	M.L.	02/07/1987
5.	Mason	J.W.	11/30/1987
6.	Maidment	S.D.	1/14/1990
7.	Martenis	L.R.	06/02/1991
8.	Spring	M.S.	11/13/1991
9.	Plumley	T.R.	3/07/1993
10.	Maier	A.P.	10/19/1994
11.	Evans	T.D.	12/03/1994
12.	White	L.J.	6/05/1997
13.	Wery	N.D.	09/06/1997
14.	McDonough	K.E.	02/28/1998
15.	Cowgar	K.M.	03/05/1998
16.	Schott	J.F.	09/20/2000

2009

Side Letter No.

Mr. J.W. Mason
American Train Dispatchers Association

Dear Mr. Mason:

This will confirm our understanding reached during negotiations leading to the Implementing Agreement of this date in connection with the transfer of train dispatching work of the GTW to Homewood, Illinois.

It was agreed that GTW employees may elect to receive a one-time lump sum payment of five hundred dollars ($500) to offset the costs associated with a familiarization/house hunting trip to the Homewood area. Employees electing the lump sum payment who do not relocate will have the five hundred dollars ($500) deducted from any future earnings or protective payments.

Accept a position

Sincerely,

C.K. Cortez
Senior Manager – Labor Relations

ATDA EXHIBIT 7

Agreement between

GRAND TRUNK WESTERN RAILROAD COMPANY
ILLINOIS CENTRAL RAILROAD COMPANY

And their employees represented by

AMERICAN TRAIN DISPATCHERS ASSOCIATION
~~ILLINOIS CENTRAL TRAIN DISPATCHERS ASSOCIATION~~

WHEREAS, the Surface Transportation Board, in decisions dated May 25, 1999, (STB Finance Docket No. 33556), approved the acquisition by Canadian National Railway Company ("CNR"), Grand Trunk Corporation ("GTC"), and Grand Trunk Western Railroad Incorporated ("GTW"), of Illinois Central Corporation ("IC Corp."), Illinois Central Railroad Company ("IC"), Chicago, Central & Pacific Railroad Company ("CCP") and Cedar River Railroad Company ("CRRC") subject to the conditions for the protection of railroad employees described in New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), and

WHEREAS, on February 3, 2009 the GTW ~~and IC~~ served notice under Article I, Section 4 of the Protective Conditions of its intent to change operations as a result of the above transaction, and

WHEREAS, the parties to this agreement agree that this Implementing Agreement, made by and between the GTW ~~and IC~~ and the American Train Dispatchers Association ("ATDA") ~~and the Illinois Central Train Dispatchers Association ("ICTDA")~~ on behalf of employees represented by ~~each respective~~ *the ATDA* to establish procedures for the transfer of work and employees whose positions will be abolished on the GTW, provides the necessary protection of employees,

IT IS AGREED:

1. On the effective date of this agreement, sixteen (16) GTW Dispatcher positions, identified in Attachment C, subject to the agreement between the GTW and the ATDA will be abolished.

2. No less than ten (10) days prior to the effective date of this agreement, the GTW will post notices at Troy for ten (10) ~~ICTDA~~ ***ATDA*** dispatcher positions at Homewood.

3. GTW dispatchers must submit their application for the above ~~options~~ ***positions*** or ***accept a separation allowance as provided for in paragraph 12, or*** state their intent to exercise their seniority to another position under the GTW/TCIU Agreement, in writing, to the individual designated by the carrier, with copy to Local Chairman, within five (5) days from date of posting. Employees must select their option(s) in order of preference. Employee elections identified on their application will be considered irrevocable. Failure to submit an application, or identify options, will result in the employee being considered as having elected to exercise seniority under existing GTW/TCIU Agreements.

4. Assignments and awarding of positions shall be made in seniority order. In the event all positions provided in paragraph 2 are selected by dispatchers ***and not all separation allowances are claimed in accordance with paragraph 12,*** clerical positions, under the GTW/TCIU agreement will be made available to the remaining employees on the GTW/ATDA seniority rosters.

5. Employees transferring from Troy to Homewood under provisions of this Agreement shall ~~become IC~~ ***remain GTW*** employees and be subject to ~~the~~ ***all*** agreements***, including all National Agreements,*** in effect between the ~~ICTDA and IC~~ ***ATDA and GTW*** covering wages, rules and working conditions, subject to the modifications contained herein ***until such time as a single Agreement is reached covering the GTW and WC train dispatchers.*** ~~On the effective date of this Agreement, the employees transferred under Paragraph 4 shall be credited with prior GTW service on the IC for benefits and vacation purposes.~~

6. Employees awarded positions transferred under the provisions of Paragraph 4 ~~and IC employees~~ will retain prior rights to those positions based upon their relative seniority standing as transferred. These rights will only terminate in the event that 1) the transferring GTW employee successfully bids to any other clerical assignment available under the terms of the CBA or, 2) the employee resigns, retires, becomes disabled, is dismissed from service or is promoted. Once a position established under Paragraph 2 is no longer subject to prior rights under this paragraph, it will, if necessary, be filled in accordance with the ~~ICTDA~~ ***ATDA*** Agreement.

7. ~~Employees awarded positions under Paragraph 4 will forfeit all GTW seniority and their seniority will be dovetailed with the seniority dates held by employees on the IC. In the event two or more employees from the different seniority rosters have identical seniority dates, the employees shall be ranked first by service dates, then, if service dates are the same, by date of birth, the~~

~~oldest employee to be designated the senior ranking. This shall not affect the respective ranking of employees with identical seniority dates on their former seniority roster.~~

~~8.~~ The employee protective benefits and conditions as set forth in the New York Dock conditions, attached hereto as Attachment "A," shall be applicable to this transaction. There shall be no duplication of benefits by an employee under this agreement and any other agreement or protective arrangement. It is understood that if active and regularly assigned dispatchers at Troy decline to apply for any of the ten (10) dispatcher positions at Homewood or if any of the ten (10) positions are left unfilled, then such employees will not be considered deprived of employment and shall not be entitled to the protective benefits contained in the New York Dock conditions as a result of this transaction, ***except as otherwise provided by this Agreement.***

~~9.~~ ***8.*** Any employee determined to be a "displaced" or "dismissed" employee as a result of this transaction, who is otherwise eligible for protective benefits and conditions under some other job security agreement, conditions or arrangements shall elect in writing within sixty (60) days of being affected between the protective benefits and conditions of this agreement and the protective benefits and conditions under such other arrangement by giving written notification to the carrier's designated individual, with copy of such election to the employee's General Chairman. Should any employee fail to make an election of benefits during the period set forth in this paragraph, such employee shall be considered as electing the protective benefits and conditions of this agreement.

9. ***GTW train dispatchers shown in Attachment C who exercise their seniority to obtain a TCIU/GTW position shall be considered eligible for a displacement allowance in accordance with Article I, Section 5 of New York Dock. The Carrier shall provide the respective employee with the calculations used to determine his/her displacement allowance within thirty (30) days of assuming the clerical position. The Carrier shall pay such displacement allowance in the first pay period of the month following the month in which a displacement allowance is due.***

10. Nothing contained herein shall be construed as depriving any employee of any rights or benefits or eliminating any obligation which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both New York Dock and some other job security or other protective conditions or arrangements, the employee shall elect between the benefits under New York Dock and similar benefits under such other arrangement and, for so long as the employee continues to receive such benefits under the provisions which the employee so elects, the employee shall not be entitled to the same type of benefit (regardless of whether or not such benefit is duplicative) under the provisions which he does not so elect; and, provided further, that after expiration of the period for which such employee is entitled to protection under that arrangement which the employee so elects, the employee may then be entitled to protection under the other arrangement for the remainder, if any, of the protective period under that arrangement. There shall be no duplication or pyramiding of benefits

to any employees, and the benefits under New York Dock, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits.

11. ~~Each "dismissed employee" shall provide the carrier's designated individual the following information for the preceding month in which such employee is entitled to benefits no later than the tenth (10th) day of each subsequent month on a standard form provided by the carrier.~~

~~(a) The day(s) claimed by such employee under any unemployment insurance act.~~

~~(b) The day(s) claimed by such employee worked in other employment, the name(s) and address(es) of the employer(s) and the gross earnings made by the dismissed employee in such other employment.~~

~~(c) The day(s) for which the employee was not available for service due to illness, injury or other reasons for which the employee could not perform service and the employee received sickness benefits.~~

In the event any of the employees shown in Attachment A cannot hold a TCIU/GTW position, cannot acquire a separation allowance as provided in paragraph 12, or cannot acquire a train dispatcher position in Homewood, such employees shall be eligible for a dismissal allowance in accordance with Article I, Section 6 of <u>New York Dock</u>. The Carrier shall provide the respective employee with the calculations used to determine his/her dismissal allowance within thirty (30) days of becoming a dismissed employee. The

Carrier shall pay such dismissal allowance in the first pay period of each month.

12. ~~If the "dismissed employee" referred to herein has nothing to report account not being entitled to benefits under any unemployment insurance law, having no earnings from any other employment, and was available for work the entire month, such employee shall submit, on a form provided by the carrier, within the time period provided for in paragraph 11, the form annotated "Nothing to Report."~~ ***There shall be at least six (6) separation allowances offered by the Carrier, which shall be determined in accordance with Article I, Section 7 of New York Dock. Employees shall apply for a separation allowance in accordance with paragraph 3, which shall be awarded in seniority order. An employee awarded a separation allowance shall have the option to take it in a lump sum, payable within fifteen (15) days of the positions being abolished in Troy, or having it spread equally over a certain number of months to reach age sixty (60). Should an employee choose to have the separation spread over a certain number of months to reach age sixty (60), the first payment shall be made in the first pay period following the abolishment of positions and he/she shall continue to receive health benefits in accordance with the same provisions as active employees for each month in which the separation allowance is received. Notwithstanding the provisions of this Section, an employee who stands for a separation allowance may chose to accept a VSA under the provisions of the Collective Bargaining Agreemen.***

~~13.~~ ~~The failure of any employee to provide the information as required in paragraphs 11 and 12 shall result in the withholding of all protective benefits during the month covered by such information pending receipt by the carrier of such information from the employee. No claim for protective benefits shall be honored beyond sixty (60) days from the time specified in paragraph 11, except in circumstances beyond the individual's control.~~

~~14.~~ ~~The carrier will make payment of the protective benefits within sixty (60) days of receipt and verification of the information required in paragraphs 11and 12.~~

~~15.~~ 13. Employees transferred from Troy to Homewood under provisions of this agreement may at their option and in lieu of any and all benefits provided by Sections 9 and 12 of the New York Dock conditions (Attachment "A"), be afforded special options as provided in Attachment "B", if eligible. Such election shall be made at the time of transfer.

~~16.~~ 14. This agreement shall constitute the required agreement, as stipulated in Article I, Section 4 of the protective conditions, for the transfer of work as indicated in the notice of February 3, 2009. The parties understand that in the future, other implementing agreements may be necessary to carry out the financial transaction set forth in STB Finance Docket No. 33556. The parties understand that such agreements are subject to notice, negotiation and possible arbitration under Article I, Section 4 of the New York Dock conditions.

~~17.~~ 15. Any dispute arising out of this Implementing Agreement and the Attachments will be handled by the General Chairman with the officer designated to receive

such claims and grievances for the Company. All unresolved disputes will be disposed of in accordance with the applicable provisions of New York Dock.

~~18.~~ 16. The provisions of this Implementing Agreement have been designed to address a particular situation. Therefore, the provisions of this Implementing Agreement and the Attachments are without precedent or prejudice to the position of either party and shall not be referred to in any other case.

~~19.~~ 17. This Agreement shall be effective upon not less than ten (10) days written notice from the company to the organization~~, but not later than May 3, 2009~~.

Signed this ____ day of , 2009 at Homewood, Illinois.

For: GRAND TRUNK WESTERN RAILROAD COMPANY; ILLINOIS CENTRAL

By: _____

By: _____

For: AMERICAN TRAIN DISPATCHERS ASSOCIATION

By: _____

Approved: _____

~~For: ILLINOIS CENTRAL TRAIN DISPATCHERS ASSOCIATION~~

~~By: _____~~

~~By: _____~~

~~Approved:~~ _____

NOTE: Attachment A Reproduction of *NYD Conditions* omitted.

ATTACHMENT B

In lieu of the benefits provided for in Sections 9 and 12 of the New York Dock conditions, employees who accept positions at Homewood ***will receive a $20,000 lump sum payment (paid no later than thirty (30) days prior to the move) and*** may elect, at the time of their transfer, to accept one of the relocation packages as provided below. All transferring employees must select either relocation option (1) or (2), payments subject to taxation:

OPTION (1) GTW Employees who relocate their primary residence to the Homewood area will receive:

After fifteen (15) working days	$2,000
After sixty (60) working days	$2,000
After six (6) months	$2,000
After one (1) year	$2,000
After fifteen (15) months	$2,000

To qualify for the above payments, an employee must be in active service at Homewood at the time such payment is due.

GTW employees who relocate their primary residence and select the benefits of this Attachment at the time of their transfer will be entitled to an additional $10,000 upon proof of sale, at fair market value, of their primary residence in the Troy area, and proof of relocation to a new primary residence within a reasonable distance of Homewood. To qualify for the benefits of this paragraph, relocation of primary residence, including both sale and relocation, must occur within two (2) years of the date of transfer. ***In lieu of the***

additional $10,000 payment, the employee can opt to have the carrier purchase his/her home at the fair market value or the original purchase price, whichever is greater.

OPTION (2) GTW Employees who rent in the Homewood area:

GTW employees who elect to rent or lease in the Homewood area, will be reimbursed for actual out-of-pocket costs of a rental accommodation, up to One Thousand ~~Three~~ *Five* Hundred Dollars (~~$1,300~~ *1,500*) per month ("rent reimbursement"). This rent reimbursement is to be used solely for the accommodations that are necessary in order for the employee to hold a Dispatcher position to Homewood, Illinois and is not intended to, and cannot, be used for any other purpose, including but not limited to enrolling children in school, paying expenses for your present residence (or any other residence), or paying for any additional costs that might incur as a result of relocating.

1. Rent reimbursement includes <u>only</u> the following items: monthly rent; the cost of a basic cable plan; monthly gas (heat) bill; monthly electric bill; and parking at your residence.
2. Rent reimbursement will be provided for only those expenses actually incurred and only up to the amount provided for in paragraph 1. The employee must provide proof that you incurred the expense in a format acceptable to the Company prior to being reimbursed for any expense. Examples of acceptable forms of proof include a signed lease agreement, monthly utility bills issued by the service provider for gas, light, basic

cable, and parking. The Company reserves the right to request the employee provide a receipt for proof that the expense has been paid.

3. ~~This is a taxable benefit to the employee, which is subject to taxation as ordinary income.~~ The Company has agreed to pay the taxes for the rent reimbursement to the extent that it is considered ordinary income and subject to taxation. ~~The employee will remain responsible for all other tax liability.~~ All rent reimbursement and taxes paid by the Company will be reported on the employee's statement of earnings.
4. Rent reimbursement will be provided to the employee for a period of time not to exceed ~~two (2)~~ *four (4)* years, or when one of the following events occur, whichever is sooner: the employee ceases to incur such expense; the employee violates any term of this relocation package; the employee's employment with the Company ends, whether voluntarily or otherwise; or the employee voluntarily chooses to transfer to another position within the Company.
5. Rent reimbursement will be offset if two or more employees rent the same living space.

ATTACHMENT C

GTW TRAIN DISPATCHER SENIORITY ROSTER

	Last Name	Initials	Seniority	
1.	***Lustig***	***W. D.***	***1/09/1977***	*
2.	Gebard	D.V.	04/19/1977	
3.	Facknitz	E.A.	05/22/1977	
4.	***Frasure***	***R. D.***	***11/20/1981***	*
5.	Campbell	L.P.	12/19/1981	
6.	McAfee	M.L.	02/07/1987	
7.	Mason	J.W.	11/30/1987	
8.	Maidment	S.D.	01/14/1990	
9.	Martenis	L.R.	06/02/1991	
10.	Spring	M.S.	11/13/1991	
11.	***Iacoangeli***	***J. T.***	***03/06/1993***	*
12.	Plumley	T.R.	03/07/1993	
13.	Maier	A.P.	10/19/1994	
14	***Willett***	***T. E.***	***10/27/1994***	*
15.	Evans	T.D.	12/03/1994	
16.	***Seibert***	***R. L.***	***05/03/1997***	*
17.	White	L.J.	06/05/1997	
18.	***Skelton***	***S. D.***	***07/19/1997***	*
19.	Wery	N.D.	09/06/1997	
20.	McDonough	K.E.	02/28/1998	
21.	Cowgar	K.M.	03/05/1998	
22.	Schott	J.F.	09/20/2000	
23.	***Naylor***	***M. J.***	***04/23/2001***	*
24.	***Pollard***	***G. S.***	***06/29/2002***	*

** Management*

_____, 2009

Side Letter No.

Mr. J.W. Mason
American Train Dispatchers Association

Dear Mr. Mason:

This will confirm our understanding reached during negotiations leading to the Implementing Agreement of this date in connection with the transfer of train dispatching work of the GTW to Homewood, Illinois.

It was agreed that GTW employees ***shall be allowed five (5) days with pay for the purpose of locating a residence in the Homewood area. Said five (5) days may be split up for up to two (2) house-hunting trip and shall be scheduled in conjunction with the employee's rest days. All travel expenses associated with the house-hunting trips shall be paid by the carrier. In lieu thereof, GTW employees*** may elect to receive a one-time lump sum payment of *twenty*-five hundred dollars ($2,500) to offset the costs associated with a familiarization/house hunting trip to the Homewood area. Employees electing the lump sum payment who do not relocate will have the *twenty*-five hundred dollars ($2,500) deducted from any future earnings or protective payments.

Sincerely,

C.K. Cortez
Senior Manager – Labor Relations

_____, *2009*

Side Letter No.

Mr. J.W. Mason
American Train Dispatchers Association

Dear Mr. Mason:

This will confirm our understanding reached during negotiations leading to the Implementing Agreement of this date in connection with the transfer of train dispatching work of the GTW to Homewood, Illinois.

It was agreed that rates of pay in effect for GTW train dispatchers at the time of the relocation shall be increased by ten percent (10%) in recognition of the increased cost of living in the Homewood area. This increase shall be effective on the first day the relocating train dispatchers work a position in the Homewood office.

Sincerely,

C.K. Cortez
Senior Manager – Labor Relations

_____, *2009*

Side Letter No.

Mr. J.W. Mason
American Train Dispatchers Association

Dear Mr. Mason:

This will confirm our understanding reached during negotiations leading to the Implementing Agreement of this date in connection with the transfer of train dispatching work of the GTW to Homewood, Illinois.

It was agreed that the carrier shall provide employment assistance for the spouses of the relocating train dispatchers at no cost to the employee or spouse. This shall include all costs associated with obtaining new employment in the Homewood area, including those costs associated with using employment agencies.

Sincerely,

C.K. Cortez
Senior Manager – Labor Relations

ATDA EXHIBIT 8

Agreement between

GRAND TRUNK WESTERN RAILROAD COMPANY
ILLINOIS CENTRAL RAILROAD COMPANY

And their employees represented by

AMERICAN TRAIN DISPATCHERS ASSOCIATION
ILLINOIS CENTRAL TRAIN DISPATCHERS ASSOCIATION

WHEREAS, the Surface Transportation Board, in decisions dated May 25, 1999, (STB Finance Docket No. 33556), approved the acquisition by Canadian National Railway Company ("CNR"), Grand Trunk Corporation ("GTC"), and Grand Trunk Western Railroad Incorporated ("GTW"), of Illinois Central Corporation ("IC Corp."), Illinois Central Railroad Company ("IC"), Chicago, Central & Pacific Railroad Company ("CCP") and Cedar River Railroad Company ("CRRC") subject to the conditions for the protection of railroad employees described in New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), and

WHEREAS, on February 3, 2009 the GTW and IC served notice under Article I, Section 4 of the Protective Conditions of their intent to change operations as a result of the above transaction, and

WHEREAS, the parties to this agreement agree that this Implementing Agreement, made by and between the GTW and IC and the American Train Dispatchers Association ("ATDA") and the Illinois Central Train Dispatchers Association ("ICTDA") on behalf of employees represented by each respective organization to establish procedures for the transfer of work and employees whose positions will be abolished on the GTW, and to provide the necessary protection of employees,

IT IS AGREED:

1. On the effective date of this agreement, sixteen (16) GTW Dispatcher positions, identified in Attachment B, covered under the agreement between the GTW and the ATDA will be abolished.

2. No less than ten (10) days prior to the effective date of this agreement, the GTW will post notices at Troy for ten (10) IC dispatcher positions at Homewood.

3. GTW dispatchers must submit their application for the above options or state their intent to exercise their seniority to another position under another Agreement to which they may hold seniority, in writing, to the individual designated by the carrier, with a copy to the employee's Local Chairman, within five (5) days from date of posting. Employees must select their option(s) in order of preference. Employee elections identified on their application will be considered irrevocable. Failure to submit an application, or identify options, will result in the employee being considered as furloughed without protection.

4. Assignments and awarding of positions shall be made in seniority order. In the event all positions provided in paragraph 2 are selected by dispatchers, clerical positions under the GTW/TCIU agreement will be made available to the remaining employees on the GTW/ATDA seniority rosters.

5. Employees transferring from Troy to Homewood under provisions of this Agreement shall become IC employees and be subject to the agreement in effect between the ICTDA and IC covering wages, rules and working conditions, subject to the modifications contained herein. On the effective

date of this Agreement, the employees transferred under Paragraph 4 shall be credited with prior GTW service on the IC for benefits and vacation purposes.

6. Employees awarded positions transferred under the provisions of Paragraph 4 and existing IC employees will retain prior rights to those positions based upon their relative seniority standing as transferred. These rights will only terminate in the event that 1) the transferring GTW employee successfully bids to any other dispatcher assignment available under the terms of the CBA or, 2) the employee resigns, retires, becomes disabled, is dismissed from service or is promoted. Once a position established under Paragraph 2 is no longer subject to prior rights under this paragraph, it will, if necessary, be filled in accordance with the ICTDA Agreement.

7. Employees awarded positions under Paragraph 4 will forfeit all GTW seniority and their seniority will be dovetailed with the seniority dates held by employees on the IC. In the event two or more employees from the different seniority rosters have identical seniority dates, the employees shall be ranked first by service dates, then, if service dates are the same, by date of birth, the oldest employee to be designated the senior ranking. This shall not affect the respective ranking of employees with identical seniority dates on their former seniority roster.

8. The employee protective benefits and conditions as set forth in the New York Dock conditions, attached hereto as Attachment "A," shall be applicable to this transaction. There shall be no duplication of benefits by an employee under this agreement and any other agreement or protective arrangement. It is understood that if active and regularly assigned dispatchers at Troy decline to

apply for any of the ten (10) dispatcher positions at Homewood or if any of the ten (10) positions are left unfilled, then such employees will not be considered deprived of employment and shall not be entitled to the protective benefits contained in the New York Dock conditions as a result of this transaction.

9. Any employee determined to be a "displaced" or "dismissed" employee as a result of this transaction, who is otherwise eligible for protective benefits and conditions under some other job security agreement, conditions or arrangements shall elect in writing within sixty (60) days of being affected between the protective benefits and conditions of this agreement and the protective benefits and conditions under such other arrangement by giving written notification to the carrier's designated individual, with copy of such election to the employee's General Chairman. Should any employee fail to make an election of benefits during the period set forth in this paragraph, such employee shall be considered as electing the protective benefits and conditions of this agreement.

10. Nothing contained herein shall be construed as depriving any employee of any rights or benefits or eliminating any obligation which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both New York Dock and some other job security or other protective conditions or arrangements, the employee shall elect between the benefits under New York Dock and similar benefits under such other arrangement and, for so long as the employee continues to receive such benefits under the provisions which the employee so elects, the employee shall not be entitled to the same type of benefit

(regardless of whether or not such benefit is duplicative) under the provisions which he does not so elect; and, provided further, that after expiration of the period for which such employee is entitled to protection under that arrangement which the employee so elects, the employee may then be entitled to protection under the other arrangement for the remainder, if any, of the protective period under that arrangement. There shall be no duplication or pyramiding of benefits to any employees, and the benefits under New York Dock, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits.

11. Each "dismissed employee" shall provide the carrier's designated individual the following information for the preceding month in which such employee is entitled to benefits no later than the tenth (10th) day of each subsequent month on a standard form provided by the carrier.

(a) The day(s) claimed by such employee under any unemployment insurance act.

(b) The day(s) claimed by such employee worked in other employment, the name(s) and address(es) of the employer(s) and the gross earnings made by the dismissed employee in such other employment.

(c) The day(s) for which the employee was not available for service due to illness, injury or other reasons for which the employee could not perform service and whether the employee received sickness benefits.

12. If the "dismissed employee" referred to herein has nothing to report account of not being entitled to benefits under any unemployment insurance law, having no earnings from any other employment, and was available for work the entire

month, such employee shall submit, on a form provided by the carrier, within the time period provided for in paragraph 11, the form annotated "Nothing to Report."

13. The failure of any employee to provide the information as required in paragraphs 11 and 12 shall result in the withholding of all protective benefits during the month covered by such information pending receipt by the carrier of such information from the employee. No claim for protective benefits shall be honored beyond sixty (60) days from the time specified in paragraph 11, except in circumstances beyond the individual's control.

14. The carrier will make payment of the protective benefits within sixty (60) days of receipt and verification of the information required in paragraphs 11and 12.

15. This agreement shall constitute the required agreement, as stipulated in Article I, Section 4 of the protective conditions, for the transfer of work as indicated in the notice of February 3, 2009. The parties understand that in the future, other implementing agreements may be necessary to carry out the financial transaction set forth in STB Finance Docket No. 33556. The parties understand that such agreements are subject to notice, negotiation and possible arbitration under Article I, Section 4 of the New York Dock conditions.

16. Any dispute arising out of this Implementing Agreement and the Attachments will be handled by the General Chairman with the officer designated to receive such claims and grievances for the Company. All unresolved disputes will be disposed of in accordance with the applicable provisions of New York Dock.

17. The provisions of this Implementing Agreement have been designed to address a particular situation. Therefore, the provisions of this Implementing Agreement

and the Attachments are without precedent or prejudice to the position of either party and shall not be referred to in any other case.

18. This Agreement shall be effective upon not less than ten (10) days written notice from the company to the organization, but not later than September 21, 2009.

Signed this th day of , 2009 at Homewood, Illinois.

For: GRAND TRUNK WESTERN RAILROAD COMPANY; and ILLINOIS CENTRAL

By: _____

Approved: _____

By: _____

By: _____

For: AMERICAN TRAIN DISPATCHERS ASSOCIATION

By: _____

Approved: _____

For: ILLINOIS CENTRAL TRAIN DISPATCHERS ASSOCIATION

By: _____

NOTE: Attachment A Reproduction of *NYD Conditions* omitted.

ATTACHMENT B

	Last Name	Initials	Seniority
1.	Gebard	D.V.	4/19/1977
2.	Facknitz	E.A.	5/22/1977
3.	Campbell	L.P.	12/19/1981
4.	McAfee	M.L.	02/07/1987
5.	Mason	J.W.	11/30/1987
6.	Maidment	S.D.	1/14/1990
7.	Martenis	L.R.	06/02/1991
8.	Spring	M.S.	11/13/1991
9.	Plumley	T.R.	3/07/1993
10.	Maier	A.P.	10/19/1994
11.	Evans	T.D.	12/03/1994
12.	White	L.J.	6/05/1997
13.	Wery	N.D.	09/06/1997
14.	McDonough	K.E.	02/28/1998
15.	Cowgar	K.M.	03/05/1998
16.	Schott	J.F.	09/20/2000

ATDA EXHIBIT 9

Agreement between

GRAND TRUNK WESTERN RAILROAD COMPANY
ILLINOIS CENTRAL RAILROAD COMPANY

And their employees represented by

AMERICAN TRAIN DISPATCHERS ASSOCIATION

WHEREAS, the Surface Transportation Board, in decisions dated May 25, 1999, (STB Finance Docket No. 33556), approved the acquisition by Canadian National Railway Company ("CNR"), Grand Trunk Corporation ("GTC"), and Grand Trunk Western Railroad Incorporated ("GTW"), of Illinois Central Corporation ("IC Corp."), Illinois Central Railroad Company ("IC"), Chicago, Central & Pacific Railroad Company ("CCP") and Cedar River Railroad Company ("CRRC") subject to the conditions for the protection of railroad employees described in New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), and

WHEREAS, on February 3, 2009 the GTW served notice under Article I, Section 4 of the Protective Conditions of its intent to change operations as a result of the above transaction, and

WHEREAS, the parties to this agreement agree that this Implementing Agreement, made by and between the GTW and the American Train Dispatchers Association ("ATDA") on behalf of employees represented by the ATDA to establish procedures for the transfer of work and employees whose positions will be abolished on the GTW, provides the necessary protection of employees,

IT IS AGREED:

1. On the effective date of this agreement, sixteen (16) GTW Dispatcher positions, identified in Attachment C, subject to the agreement between the GTW and the ATDA will be abolished and the work they perform will be transferred to Homewood.

2. No less than ten (10) days prior to the effective date of this agreement, the GTW will post notices at Troy for at least ten (10) GTW dispatcher positions at Homewood to perform the work being transferred. Should additional positions be needed to perform such work, they shall be offered to those Troy dispatchers who are not part of the initial transfer of employees, as provided below.

3. GTW dispatchers must each (a) submit their application for a position at Homewood, (b) accept a separation allowance as provided for in paragraph 12, or (c) state his/her intent to exercise seniority to another position under another collective bargaining agreement under which he/she holds seniority (i.e. the GTW/TCIU Agreement), in writing, to the individual designated by the carrier, with copy to Local Chairman, within five (5) days from date of posting. Employees must select their option(s) in order of preference. Employee elections identified on their application will be considered irrevocable. Failure to submit an application, or identify options, will result in the employee being considered as having elected to exercise seniority under existing GTW/TCIU Agreements or otherwise accept a clerical position as provided in paragraph 4 below.

4. Assignments and awarding of positions shall be made in seniority order. In the event all positions provided in paragraph 2 are selected by dispatchers and not all separation allowances are claimed in accordance with paragraph 12, clerical positions, under the GTW/TCIU agreement will be made available to the remaining employees on the GTW/ATDA seniority roster. (See Attachment C). Employees who accept such clerical positions shall be considered displaced employees who retain rights to bid positions performing the dispatching work transferred to Homewood as such positions become available, and to transfer to such positions on the same terms and conditions applicable to those Troy train dispatchers who initially transfer to Homewood. They shall receive advance notice of such vacancies and be afforded a minimum of ten (10) days in which to bid. Failure to submit a bid will result in the surrender of all rights under this Agreement.

5. Employees transferring from Troy to Homewood under provisions of this Agreement shall remain subject to ATDA representation and all agreements, including all National Agreements, in effect between the ATDA and GTW covering wages, rules and working conditions, subject to the modifications contained herein, until such time as a single Agreement is reached covering all ATDA-represented train dispatchers working at Homewood.

6. Employees awarded positions created pursuant to paragraph 2 will retain prior rights to those positions based upon their relative seniority standing as transferred. These rights will only terminate in the event that 1) the transferring GTW employee successfully bids to any other assignment not

covered by the ATDA-GTW agreements or, 2) the employee resigns, retires, becomes disabled, is dismissed from service or is promoted. Once a position established under Paragraph 2 is no longer subject to prior rights under this paragraph, it will, if necessary, be filled in accordance with the ATDA Agreement subject to paragraph 4 above.

7. The employee protective benefits and conditions as set forth in the New York Dock conditions, attached hereto as Attachment "A," shall be applicable to this transaction. There shall be no duplication of benefits by an employee under this agreement and any other agreement or protective arrangement.

8. Any employee determined to be a "displaced" or "dismissed" employee as a result of this transaction, who is otherwise eligible for protective benefits and conditions under some other job security agreement, conditions or arrangements shall elect in writing within sixty (60) days of being affected between the protective benefits and conditions of this agreement and the protective benefits and conditions under such other arrangement by giving written notification to the carrier's designated individual, with copy of such election to the employee's General Chairman. Should any employee fail to make an election of benefits during the period set forth in this paragraph, such employee shall be considered as electing the protective benefits and conditions of this agreement.

9. GTW train dispatchers shown in Attachment C who exercise their seniority to obtain a TCIU/GTW position shall be considered eligible for a displacement allowance in accordance with Article I, Section 5 of New York Dock. The Carrier shall provide the respective employee with the calculations used to

determine his/her displacement allowance within thirty (30) days of assuming the clerical position. The Carrier shall pay such displacement allowance in the first pay period of the month following the month in which a displacement allowance is due.

10. Nothing contained herein shall be construed as depriving any employee of any rights or benefits or eliminating any obligation which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both New York Dock and some other job security or other protective conditions or arrangements, the employee shall elect between the benefits under New York Dock and similar benefits under such other arrangement and, for so long as the employee continues to receive such benefits under the provisions which the employee so elects, the employee shall not be entitled to the same type of benefit (regardless of whether or not such benefit is duplicative) under the provisions which he does not so elect; and, provided further, that after expiration of the period for which such employee is entitled to protection under that arrangement which the employee so elects, the employee may then be entitled to protection under the other arrangement for the remainder, if any, of the protective period under that arrangement. There shall be no duplication or pyramiding of benefits to any employees, and the benefits under New York Dock, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits.

11. In the event any of the employees shown in Attachment C cannot hold a position under another GTW collective bargaing agreement (i.e. TCIU/GTW), cannot acquire a separation allowance as provided in paragraph 12, or cannot acquire a train dispatcher position in Homewood, such employees shall be eligible for a dismissal allowance in accordance with Article I, Section 6 of New York Dock. The Carrier shall provide the respective employee with the calculations used to determine his/her dismissal allowance within thirty (30) days of becoming a dismissed employee. The Carrier shall pay such dismissal allowance in the first pay period of each month.

12. There shall be at least eight (8) separation allowances offered by the Carrier, which shall be determined in accordance with Article I, Section 7 of New York Dock. Employees shall apply for a separation allowance in accordance with paragraph 3, which shall be awarded in seniority order. An employee awarded a separation allowance shall have the option to take it in a lump sum, payable within fifteen (15) days of the positions being abolished in Troy, or having it spread equally over a certain number of months to reach age sixty (60). Should an employee choose to have the separation spread over a certain number of months to reach age sixty (60), the first payment shall be made in the first pay period following the abolishment of positions and he/she shall continue to receive health benefits in accordance with the same provisions as active employees for each month in which the separation allowance is received. Notwithstanding the provisions of this Section, an employee who stands for a

separation allowance may chose to accept a VSA under the provisions of the Collective Bargaining Agreement.

13. Employees that transferred from Troy to Homewood under provisions of this agreement may at their option and in lieu of any and all benefits provided by Sections 9 and 12 of the New York Dock conditions (Attachment "A"), be afforded special options as provided in Attachment "B." Such election shall be made at the time of transfer.

14. This agreement shall constitute the required agreement, as stipulated in Article I, Section 4 of the protective conditions, for the transfer of work as indicated in the notice of February 3, 2009. The parties understand that in the future, other implementing agreements may be necessary to carry out the financial transaction set forth in STB Finance Docket No. 33556. The parties understand that such agreements are subject to notice, negotiation and possible arbitration under Article I, Section 4 of the New York Dock conditions.

15. Any dispute arising out of this Implementing Agreement and the Attachments will be handled by the General Chairman with the officer designated to receive such claims and grievances for the Company. All unresolved disputes will be disposed of in accordance with the applicable provisions of New York Dock.

16. The provisions of this Implementing Agreement have been designed to address a particular situation. Therefore, the provisions of this Implementing Agreement and the Attachments are without precedent or prejudice to the position of either party and shall not be referred to in any other case.

17. This Agreement shall be effective upon not less than ten (10) days written notice from the company to the organization.

Signed this ____ day of , 2009 at Homewood, Illinois.

For: GRAND TRUNK WESTERN RAILROAD COMPANY; ILLINOIS CENTRAL

By: _____

By: _____

For: AMERICAN TRAIN DISPATCHERS ASSOCIATION

By: _____

Approved: _____

NOTE: Attachment A Reproduction of *NYD Conditions* omitted.

ATTACHMENT B

In lieu of the benefits provided for in Sections 9 and 12 of the New York Dock conditions, employees who accept positions at Homewood will receive a $20,000 lump sum payment (paid no later than thirty (30) days prior to the move) and may elect, at the time of their transfer, to accept one of the relocation packages as provided below. All transferring employees must select either relocation option (1) or (2), payments subject to taxation:

OPTION (1) GTW Employees who relocate their primary residence to the Homewood area will receive:

After fifteen (15) working days	$2,000
After sixty (60) working days	$2,000
After six (6) months	$2,000
After one (1) year	$2,000
After fifteen (15) months	$2,000

To qualify for the above payments, an employee must be in active service at Homewood at the time such payment is due.

GTW employees who relocate their primary residence and select the benefits of this Attachment at the time of their transfer will be entitled to an additional $10,000 upon proof of sale, at fair market value, of their primary residence in the Troy area, and proof of relocation to a new primary residence within a reasonable distance of Homewood. To qualify for the benefits of this paragraph, relocation of primary residence, including both sale and relocation, must occur within two (2) years of the date of transfer. In lieu of the

additional $10,000 payment, the employee can opt to have the carrier purchase his/her home at the fair market value or the original purchase price, whichever is greater.

OPTION (2) GTW Employees who rent in the Homewood area:

GTW employees who elect to rent or lease in the Homewood area, will be reimbursed for actual out-of-pocket costs of a rental accommodation, up to One Thousand Five Hundred Dollars ($1,500) per month ("rent reimbursement"). This rent reimbursement is to be used solely for the accommodations that are necessary in order for the employee to hold a Dispatcher position to Homewood, Illinois and is not intended to, and cannot, be used for any other purpose, including but not limited to enrolling children in school, paying expenses for your present residence (or any other residence), or paying for any additional costs that might incur as a result of relocating.

1. Rent reimbursement includes **only** the following items: monthly rent; the cost of a basic cable plan; monthly gas (heat) bill; monthly electric bill; and parking at your residence.
2. Rent reimbursement will be provided for only those expenses actually incurred and only up to the amount provided for in paragraph 1. The employee must provide proof that you incurred the expense in a format acceptable to the Company prior to being reimbursed for any expense. Examples of acceptable forms of proof include a signed lease agreement, monthly utility bills issued by the service provider for gas, light, basic

cable, and parking. The Company reserves the right to request the employee provide a receipt for proof that the expense has been paid.

3. The Company has agreed to pay the taxes for the rent reimbursement to the extent that it is considered ordinary income and subject to taxation. All rent reimbursement and taxes paid by the Company will be reported on the employee's statement of earnings.
4. Rent reimbursement will be provided to the employee for a period of time not to exceed four (4) years, or when one of the following events occur, whichever is sooner: the employee ceases to incur such expense; the employee violates any term of this relocation package; the employee's employment with the Company ends, whether voluntarily or otherwise; or the employee voluntarily chooses to transfer to another position within the Company.
5. Rent reimbursement will be offset if two or more employees rent the same living space.

ATTACHMENT C

GTW TRAIN DISPATCHER SENIORITY ROSTER

	Last Name	Initials	Seniority	
1.	Lustig	W. D.	1/09/1977	*
2.	Gebard	D.V.	04/19/1977	
3.	Facknitz	E.A.	05/22/1977	
4.	Frasure	R. D.	11/20/1981	*
5.	Campbell	L.P.	12/19/1981	
6.	McAfee	M.L.	02/07/1987	
7.	Mason	J.W.	11/30/1987	
8.	Maidment	S.D.	01/14/1990	
9.	Martenis	L.R.	06/02/1991	
10.	Spring	M.S.	11/13/1991	
11.	Iacoangeli	J. T.	03/06/1993	*
12.	Plumley	T.R.	03/07/1993	
13.	Maier	A.P.	10/19/1994	
14	Willett	T. E.	10/27/1994	*
15.	Evans	T.D.	12/03/1994	
16.	Seibert	R. L.	05/03/1997	*
17.	White	L.J.	06/05/1997	
18.	Skelton	S. D.	07/19/1997	*
19.	Wery	N.D.	09/06/1997	
20.	McDonough	K.E.	02/28/1998	
21.	Cowgar	K.M.	03/05/1998	
22.	Schott	J.F.	09/20/2000	
23.	Naylor	M. J.	04/23/2001	*
24.	Pollard	G. S.	06/29/2002	*

* Management

_____, 2009

Side Letter No.

Mr. J.W. Mason
American Train Dispatchers Association

Dear Mr. Mason:

This will confirm our understanding reached during negotiations leading to the Implementing Agreement of this date in connection with the transfer of train dispatching work of the GTW to Homewood, Illinois.

It was agreed that GTW employees shall be allowed five (5) days with pay for the purpose of locating a residence in the Homewood area. Said five (5) days may be split up for up to two (2) house-hunting trip and shall be scheduled in conjunction with the employee's rest days. All travel expenses associated with the house-hunting trips shall be paid by the carrier. In lieu thereof, GTW employees may elect to receive a one-time lump sum payment of twenty-five hundred dollars ($2,500) to offset the costs associated with a familiarization/house hunting trip to the Homewood area. Employees electing the lump sum payment who do not relocate will have the twenty-five hundred dollars ($2,500) deducted from any future earnings or protective payments.

Sincerely,

C.K. Cortez
Senior Manager – Labor Relations

_____, 2009

Side Letter No.

Mr. J.W. Mason
American Train Dispatchers Association

Dear Mr. Mason:

This will confirm our understanding reached during negotiations leading to the Implementing Agreement of this date in connection with the transfer of train dispatching work of the GTW to Homewood, Illinois.

It was agreed that rates of pay in effect for GTW train dispatchers at the time of the relocation shall be increased by ten percent (10%) in recognition of the increased cost of living in the Homewood area. This increase shall be effective on the first day the relocating train dispatchers work a position in the Homewood office.

Sincerely,

C.K. Cortez
Senior Manager – Labor Relations

_____, 2009

Side Letter No.

Mr. J.W. Mason
American Train Dispatchers Association

Dear Mr. Mason:

This will confirm our understanding reached during negotiations leading to the Implementing Agreement of this date in connection with the transfer of train dispatching work of the GTW to Homewood, Illinois.

It was agreed that the carrier shall provide employment assistance for the spouses of the relocating train dispatchers at no cost to the employee or spouse. This shall include all costs associated with obtaining new employment in the Homewood area, including those costs associated with using employment agencies.

Sincerely,

C.K. Cortez
Senior Manager – Labor Relations

ATDA EXHIBIT 10

3 I.C.C.2d 729, 1987 WL 97266 (I.C.C.)

SURFACE TRANSPORTATION BOARD (S.T.B.)

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY-ABANDONMENT-NEAR DUBUQUE AND OELWEIN, IA

Decided April 17, 1987
**1 Effective on May 29, 1987

The Commission accepts jurisdiction to review but denies a petition seeking review of an arbitration award of claims under employee protective conditions imposed in these abandonments. Standards are established for reviewing arbitration decisions.

Docket No. AB-1 (Sub-No. 83) [FN1]

Stuart F. Gassner and *Christopher A. Mills* for Chicago and North Western Transportation Company.

Michael S. Wolly and *Gregory K. McGillivary* for International Brotherhood of Electrical Workers.

DECISION

BY THE COMMISSION:

BACKGROUND

By decisions served January 28 and November 17, 1981, respectively, the Chicago and North Western Transportation Company (CNW) was authorized, under 49 U.S.C. §10903, to abandon rail lines between Dubuque and Oelwein, IA, and between Oelwein, IA, and Randolph, MN. In both abandonments, we imposed the employee protection conditions in *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979) (*Oregon III*).

On December 15, 1982, as a result of the above-described abandonments, CNW abolished an electrician's job at Oelwein held by Mr. Daniel Scheele. Mr. Scheele exercised his seniority rights and was awarded another job in CNW's Western Division. In February 1983, Mr. Scheele moved his family to Chadron, NE. However, he was unable to sell his home in Oelwein until July 26, 1984, at an allegedly depressed price of $40,000.

*730 Through the International Brotherhood of Electrical Workers (IBEW), Mr. Scheele presented claims to CNW for *Oregon III* benefits for moving expenses and loss incurred from sale of his home. Among other moving expenses, he claimed $500 for a "lace curtain allowance"[FN2] under Article I, Section 9 of *Oregon III*. He also claimed compensation for loss incurred on the sale of his home. The alleged loss was based on the difference between the appraised value of the home in July 1980, and the reduced value of the home when it was sold in 1984. Mr. Scheele also claimed

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that CNW should pay mortgage interest and realtor's commission as part of compensation for loss. In addition, Mr. Scheele claimed that he was entitled to judgment-type interest on the entire amount of his claims. CNW disputed the claims; they were submitted subsequently to a Board of Arbitration (Board) under Article I, Section 11 of *Oregon III*.

As the Board's decision notes, IBEW and CNW used Article I, Section 12 procedures to resolve the valuation issue over Mr. Scheele's home. IBEW presented an appraisal valuing the home at $49,000 as of July 1980. IBEW selected this date because it allegedly conformed with the requirement in Section 12 that an appraisal be at a "date sufficiently prior to the date of the transaction as to be unaffected thereby." IBEW asserts that July 1980 coincided with the time period that CNW filed its first abandonment application, which started the chain of events leading to the elimination of Mr. Scheele's job. CNW, on the other hand, appraised the home at $44,000 as of December 1982, when Mr. Scheele's job was abolished, and when he was, in fact, adversely affected. IBEW and CNW then selected a neutral appraiser. The neutral appraiser decided that both appraisals were applicable.

**2 According to the arbitration decision, the parties agreed that the Board would select one of the appraisals as the basis for Mr. Scheele's Section 12 benefits. The Board found that the dates of the transactions that ultimately caused the elimination of Mr. Scheele's job occurred in 1981 when CNW was granted authority to abandon the Oelwe-in-Dubuque and Oelwein-Randolph lines. Accordingly, the Board determined that the July 1980 appraisal would be used, because it comported more closely with the "date sufficiently prior" requirement of Section 12.

CNW sought to limit the Board's action to resolving the issue of fair market value of Mr. Scheele's home. However, the Board rejected CNW's position and, instead, agreed with IBEW that Mr. Scheele was also entitled to "associated benefits" covered by sections of Article I other than Section 12, including moving expenses provided in Section 9.

The Board identified three expense categories under Section 12. It found that the loss on the sale of Mr. Scheele's home was $9,000, the largest monetary item claimed. It also granted claims of associated costs for mortgage interest ($3,652.44) and realtor's commission ($2,400) as benefits under Section 12.

*731 For the Section 9 awards, the Board directed the parties to negotiate the payment of the lace curtain allowance. Apparently, the parties agreed to this $500 payment, for the final award grants the allowance "as a benefit historically conferred by many agreements." Moving expenses allowed totalled $1,001.52.

The Board also granted the claim for interest "for the monetary benefits heretofore withheld and now awarded." It stated that, "[P]ayment of interest is proper and appropriate under the circumstances and not violative of the spirit and intent of the applicable provisions of [*Oregon III*]." Total interest allowed was $1,324.02. The total award was $17,397.98.

CNW here seeks Commission review of the Board's decision. The IBEW opposes CNW's request.

CNW argues that we have jurisdiction to review the Board's decision under 49 U.S.C. §10903(b)(2), which authorizes the Commission to impose labor protection in rail abandonments. It contends that the arbitration procedures in Section 11 amount to a delegation of authority from the Commission to the Board to resolve disputes arising under *Oregon III*. Accordingly, it asserts that there exists an implicit right to appeal a disputed decision to this Commission. CNW acknowledges, however, that such an appeal is not expressly provided by statute.[FN3]

CNW contends that the Board erred in granting the "lace curtain allowance." It argues that expenses covered by Section 9 are those incurred for moving an employee's household, traveling expenses for the employee and his family, living expenses, and actual wage loss for up to three days. No mention is made of expenses incurred in decorating a new home, such as those for installing new curtains. CNW claims that including "a lace curtain allowance" as a

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moving expense is error.[FN4]

**3 Next, it claims that the Board lacked jurisdiction to require payment of claims for Mr. Scheele's loss from sale of his home. CNW argues that disagreements over the amount of loss from the sale of the home are to be resolved under Section 12 of *Oregon III*. However, it argues that these disputes are not to be arbitrated under Section 11, absent a railroad's consent. CNW states that it consented here only to have the Board determine the date to be used to ascertain the value of Mr. Scheele's home. Also, it claims the Board lacked jurisdiction to require payment of mortgage interest and real estate commission as part of compensation for loss on the sale of Mr. Scheele's home.

*732 Finally, CNW disputes the Board's decision to award judgement-type interest. It points out that there is no provision in *Oregon III* for awarding interest to claimants. To do so, it alleges, is beyond the scope of *Oregon III* and is thus improper.

CNW requests that we review the Board's decision and set aside the award as being beyond its jurisdiction under Section 11. In the alternative, CNW requests that we reduce the award by $7,876.46, representing those claims that it asserts the Board granted improperly.

IBEW opposes CNW's petition, contending that the Interstate Commerce Act and the arbitration provisions of *Oregon III* provide no right to appeal the Board's abitration award to the Commission. In this regard, it disputes CNW's underlying assertion that the Board acted under a delegation of authority from the Commission. It argues further that CNW's request is untimely and contrary to Commission precedent not to become involved in disputes between carriers and employees arising out of protective conditions where arbitration is prescribed as the mode of redress.

DISCUSSION AND CONCLUSION

The principal issue raised by CNW's petition is our jurisdiction to review the Board's award to Mr. Scheele. The Commission has consistently refused to become involved in individual employee disputes arising under imposed employee protection conditions, deferring instead to arbitration for determination of causation issues and factual questions.[FN5] Now for the first time, we have been asked to review an arbitration decision awarding benefits under Commission-imposed employee protection conditions.

A number of questions must be answered to resolve this matter. First, we must determine whether we have authority to review arbitral decisions. If we find we have such authority, we must decide under what standards we will do so. Finally, we must apply those standards to the facts of this case.

1. *I.C.C. authority to review arbitration decisions*. As noted earlier, there is no specific Commission precedent to rely on in resolving this issue. However, actions of the former Civil Aeronautics Board (CAB) are useful guidance. The court cases affirming CAB review of arbitral awards strongly suggest that we are entitled, if not required, to review the arbitration decision in this case.

**4 The CAB for many years imposed Labor Protective Provisions (LPP's) in merger agreements.[FN6] Airline mergers regulated by the CAB were not subject *733 to statutory requirements for employee protection. Thus, the CAB did not have specific statutory authority to impose employee protective conditions, nor did it have authority to review arbitration decisions. Nevertheless, the CAB directed airline employees to arbitrate disputes, recognizing that the arbitrator's role in resolving disputes under collective bargaining agreements is comparable to the arbitrator's role in resolving disputes under LPP's. *See* *Pan American World Airways v. CAB*, 683 F.2d 554, 559 (D.C. Cir. 1982).

The CAB assumed responsibility for reviewing arbitrators' decisions under LPP's, and its assumption of authority to

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individual seeking protection an "employee" covered by labor protection and was his employment status "affected" by a merger or abandonment). *See, e.g. Leavens, supra*, 348 I.C.C at 975. However, nothing in the mandatory arbitration requirement forecloses us from considering whether our abandonment decisions (and labor protection conditions) have been properly interpreted or carried out as we intended.[FN12] Accordingly, we find that we have authority to review arbitrators' decisions.

2. *The standard of review*. Under the *Steelworkers Trilogy*, courts generally set an extremely limited scope of review of arbitration decisions. They confine their scrutiny to determining whether an award was procedurally fair and impartial. Awards are not vacated because of an alleged substantive mistake, unless there is egregious error, the award fails to draw its essence from the collective bargaining agreement, or the arbitrator exceeds the specific contract limits on his authority. *Loveless v. Eastern Airlines, Inc.*, 681 F.2d 1272, 1275-1276 (11th Cir. 1982).

**6 The special role of labor arbitrators in resolving disputes was discussed in *American Mfg. Co., supra*, 363 U.S. at 561-562. There, the Supreme Court recognized that arbitration was superior to court litigation for resolving labor disputes. The Court noted that the arbitrator performs functions not normal to courts and is able to fashion judgment outside of a court's normal competence. The arbitrator is not confined to the express provisions of collective bargaining agreements, but may also consider his personal knowledge of the practices of the industry, even though they are not expressed specifically in the agreement itself. His analysis of a grievance, therefore, will involve additional factors such as productivity, morale, and whether his decision will heighten or diminish tensions. The personal knowledge of the arbitrator, particularly of industry and labor practices, thus gives him special experience and competence in resolving disputes. Accordingly, the Supreme Court concluded that an arbitrator's decision on the merits and his interpretation of the collective bargaining agreement are to be given extreme deference, even though a court could interpret an agreement differently. Also, courts are to give a strong presumption of finality to an award. *Enterprise W. & C. Corp., supra*, 363 U.S. at 597-598.

*736 As indicated above, the *Steelworkers Trilogy* established a narrow scope of judicial review, deferring to the arbitrator especially on the merits of the claim. Those standards are consistent with the reasons arbitration procedures are prescribed to resolve disputes. Arbitrators are most familiar with the complexities of labor laws and peculiarities of disputes involving railroad employees. *Leavens, supra*, 348 I.C.C. at 975 (1977). We also recognize the arbitrators' special role in resolving disputes exercising authority derived from the protection conditions we impose and in using their knowledge and experience of industry practices in interpreting the conditions.

Therefore, we will limit our review of arbitrators' decisions to recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions. This approach is consistent *both* with *Wallace* and *Steelworkers Trilogy*.

We do not intend to review arbitrators' decisions on issues of causation, the calculation of benefits, or the resolution of other factual questions. Accordingly, we will not become a regular participant in the process as reviewer of arbitration decisions. In applying this standard in future cases, we will treat summarily those that do not meet this standard of review.

3. *Application to this case*. Because this is the first case of this type that we have been asked to review, and we had no standards established, we offer our detailed analysis below.

We conclude that CNW has raised no issues that warrant re-evaluation of the Board's decision under the narrow scope of review established in the case law discussed in the prior section.[FN13] We have considered whether the decision reflects a misinterpretation or misapplication of *Oregon III*.

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**7 First, we consider whether the award to Mr. Scheele is based on a proper interpretation of the *Oregon III* conditions (*i.e.*, a substitute for the collective bargaining agreement conditions). The awards that CNW challenges are not specifically provided for in *Oregon III*. However, as we discussed above, the Board granted Mr. Scheele's claims as being within the context and spirit of the *Oregon III* conditions. The lace curtain allowance was granted as a moving expense under section 9 as a benefit accorded in the industry to employees granted *Oregon III* protection. Reimbursement of a real estate commission and mortgage interest was granted as a section 12 benefit. Judgment-type interest was granted as not being contrary to *Oregon III*. Given the leeway the Board has to consider industry practice, we cannot find that the award failed to draw its essence from the letter and purpose of *Oregon III*. *See Enterprise W. & C. Corp., supra*, 363 U.S. at 597. This is not to say that we would conclude that the Board's denial of any of these three items would be in error. Put another way, so long as the Board is interpreting and applying the *Oregon III* conditions and not dispensing its "own brand of industrial policy" (*ibid.*), we would not object to the Board's granting *or* denying awards on these three particular items.

*737 Second, we must consider whether the Board acted within its authority under *Oregon III*. We reject CNW's claim that the Board exceeded its authority in setting the value for Mr. Scheele's home. The Board's opinion shows that the CNW and IBEW followed the procedures in Section 12 of *Oregon III* to establish the value of the home. The parties first attempted to resolve the dispute at a conference. When an agreement could not be reached, the dispute was referred to a panel consisting of representatives from IBEW and CNW, who then selected a neutral appraiser. Rather than resolving the valuation issue, the Board of Appraisers reached two valuations: one for the value as of July 1980, and the other for the value as of December 1982. The parties then agreed that the Board established under Section 11 would decide which appraisal would be used to determine the loss on sale of Mr. Scheele's home.

Even though Section 11 excludes valuation determinations from those disputes that the Board could resolve, the parties clearly and unmistakenly consented to having the Board resolve this matter. The consent thus overcame the restriction in Section 11. *See* AT&T Tech. Inc. v Communications Workers, 106 S.Ct. 1415, 1418 (1986). The Board was then able to resolve other disputed claims under section 12 for the real estate commission and mortgage interest that were determined to be part of the loss incurred by Mr. Scheele from sale of his home, as well as claims for a lace curtain allowance and judgment-type interest. Thus, the Board was properly acting within the scope of the *Oregon III* conditions and the agreement of the parties in granting claims of Mr. Scheele.

**8 In conclusion, we cannot find that the benefits fail to draw their essence from the *Oregon III* conditions imposed in the proceedings, or that the Board's action was outside its authority under Article 1, Section 11 of *Oregon III*. Accordingly, we deny CNW's petition seeking our review of the Board's award to Mr. Scheele.

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

It is ordered:

1. CNW's petition seeking our review of the Board of Arbitration award to Mr. Daniel Scheele is accepted but is denied.

2. This decision is effective on May 29, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

FN1. This proceeding embraces Docket No. AB-1 (Sub-No. 113), *Chicago and North Western Transportation Company-Abandonment-Between Oelwein, IA and Randolph, MN.*

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FN2. According to CNW, a "lace curtain allowance" represents expenses that may be incurred in preparing a newly-purchased home for occupancy, *e.g* , installing new curtains

FN3. In view of uncertainty over where to appeal the arbitral decision, CNW has also sought judicial review of the Board's decision. It has requested that the court hold its review in abeyance pending our decision. *See Chicago and North Western Transportation Company v. United States and Interstate Commerce Commission* No. 86-1394 (7th Cir., filed March 12, 1986). This decision should provide guidance to parties regarding future appeals of arbitration decisions and avoidance of duplicative filings.

FN4. CNW acknowledges, however, that a "lace curtain allowance" may be provided for separately in collective bargaining agreements.

FN5. *See, e.g.,* *Brotherhood of Locomotive Engineers v. I.C.C.*, 808 F. 2d 1570 (1987); *Walsh v. I.C.C.*, 723 F. 2d 570, 574 (7th Cir. 1983); *Bell v Western Maryland Railroad Company*, 366 I.C.C. 64, 68 (1982).

FN6. *See United Capital Merger Case*, 33 C.A.B. 307, 323 (1961). The LPP's are adapted from the Washington Job Protection Agreement of 1936, the same source for the protective conditions we impose in abandonments. *See Oregon Short Line R. Co.-Abandonment-Goshen*, 354 I.C.C. 76, 81 (1977).

FN7. The authority for the courts to review arbitration decisions was established in the so-called *Steelworkers Trilogy* involving arbitration decisions issued under collective bargaining agreements. *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers v Warrier & Gulf Navigation Co.*, 363 U.S. 574 (1960); and *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 574 (1960).

FN8. *See* *Norfolk & Western R.R. v Nemitz*, 404 U.S. 37 (1971).

FN9. *See* *Brotherhood of Locomotive Engineers v. Chicago & N. W. Transp. Co.*, 366 I.C.C. 857, 860-861 (1983).

FN10. IBEW also asserts that CNW's petition was not filed within the 20 days provided in our rules for petitions seeking administrative review. We disagree that CNW's petition is out of time. CNW has explained that it did not file within 20 days of receiving the arbitration decision because the copy it received on January 21st was not signed by the union member of the Board. Its petition was filed on March 6th, only one day after receiving a fully executed copy. It is customary that all members of arbitration boards sign arbitration decisions. Since CNW filed its petition so promptly after receiving a fully executed copy, we will accept it.

FN11. Our jurisdiction to review an arbitral award rendered under labor protection conditions we imposed is being considered in *United Transp. Union v. Norfolk & Western Railway Co., et al.* No. 86-5003 (D. C. Cir.) argued February 13, 1987. There, the UTU asserts that the district court had jurisdiction to review the arbitral award. The railroads contend that the award was reviewable in the first instance by the Commission with subsequent review in the Courts of Appeal under the Hobbs Act, 28 U.S.C. §2341, *et seq.* The Commission is not participating in the appeal.

FN12. As the court recently explained in *Brotherhood of Locomotive Engineers v. ICC*, 808 F.2d 1570, 1579 n. 75 (D.C. Cir. 1987).

> Where, as here, the conditions to which the Commission subjected the railroads specifically require them to submit to arbitration as a prerequisite as to its approval of the transaction proposed, the Commission has in fact exercised jurisdiction ***. Arbitration is a legitimate means of resolving labor disputes and does not divest the Commission of its jurisdiction.

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FN13. CNW does not even allege that the award was irrational or without foundation.

3 I.C.C.2d 729, 1987 WL 97266 (I.C.C.)
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ATDA EXHIBIT 11

Sperling's BestPlaces

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Compare Cities: Pontiac, MI - Homewood, IL

Compare Home Values
Learn Your Home's Compared Market Value Free! Simple 60 sec Form.

The Real Cost of Living
Trace the Eco-Life Cycle of Common Everyday Products with Eco Trip

Ads by Google

COSTLIV	Pontiac	Homewood	United States
Overall	74	95	100
Grocery	106.3	105	100
Health	113	116	100
Housing	28	69	100
Utilities	88	105	100
Transportation	104	119	100
Miscellaneous	96	107	100

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ATDA EXHIBIT 12

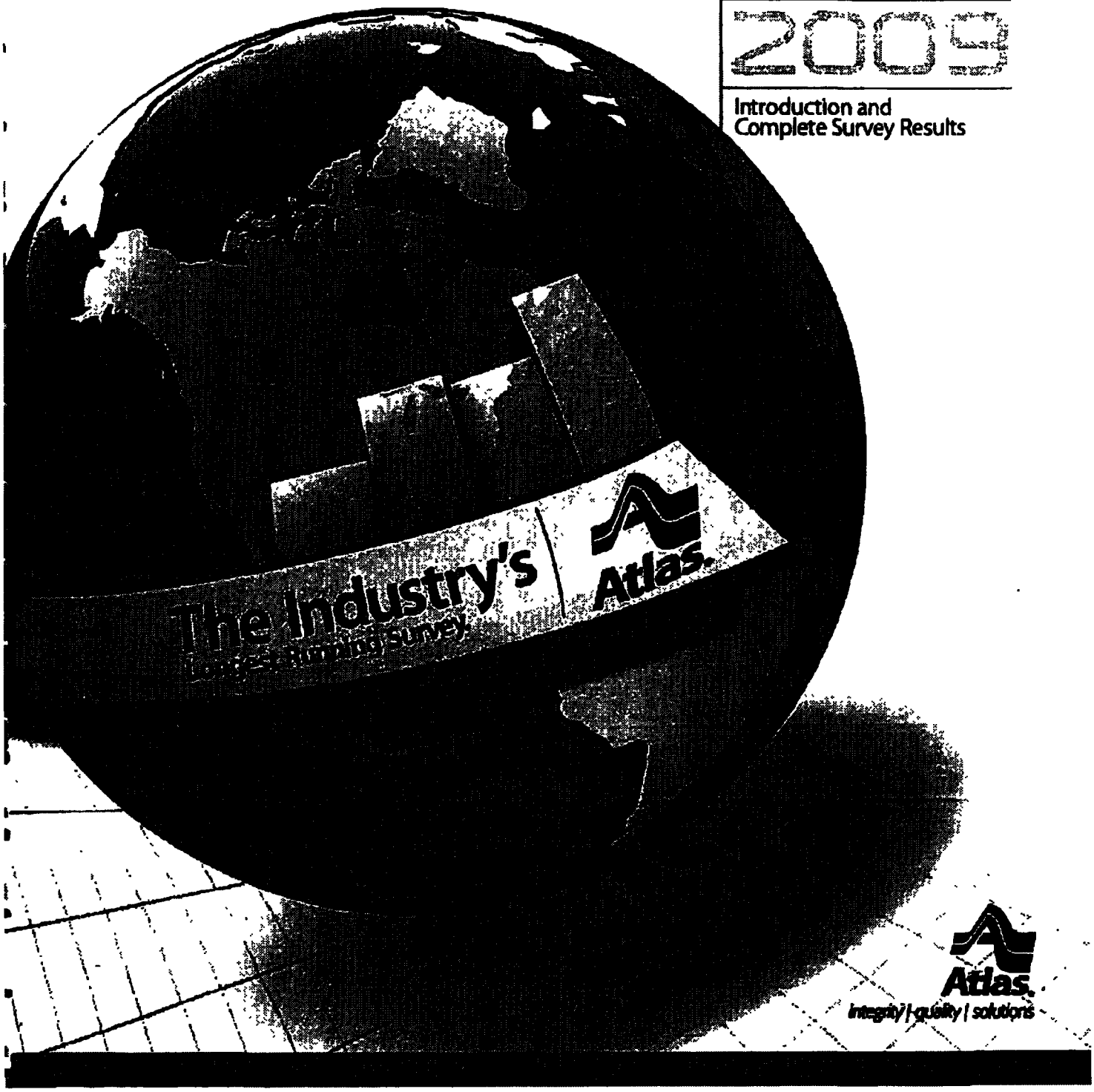
Results 42

FORTY-SECOND ANNUAL

Corporate Relocation Survey

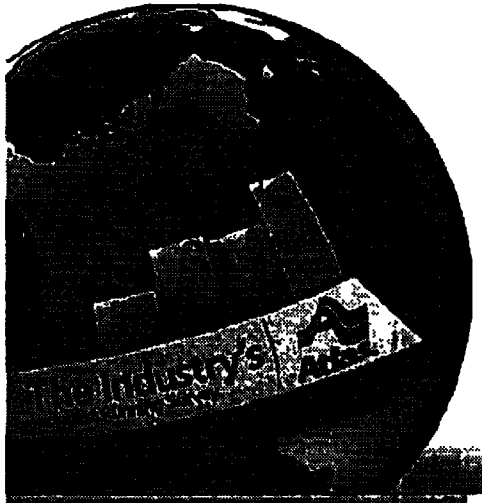
2009

Introduction and Complete Survey Results



Atlas.

integrity | quality | solutions



Results42
FORTY-SECOND ANNUAL

Corporate Relocation Survey Introduction

Results Highlights

Relocation Volume and Budgets
Anticipated Volumes and Budgets Drop Sharply

Projections for 2009 are not optimistic. Nearly half of all firms expect 2009 relocation volumes and budgets to decrease from 2008 levels. They also indicate relocation volumes and budgets were already trending lower last year: one out of four state 2008 relocation volumes decreased from 2007 and nearly one-fifth indicate budgets decreased as well.

The percentages of firms expecting further cuts to relocation volumes and budgets are more than double those seen the past five years. Additionally, compared to survey results during the milder economic retraction in 2002, when 30% of companies reported decreases in volumes and 26% reported decreases in budgets, it is apparent that the deepening recession will bring further cuts in 2009.

The expectation for decreased volumes among 52% of firms surpasses the biggest percentage of firms ever to predict decreases (38% in 1975), indicating the severity of cutbacks could potentially reach levels not seen since this survey began in the late 1960's.

- *The median number of relocations by mid-size firms dropped from "20-49" to "10-19" and fell from "200-399" to "100-199" among large firms; this is the first time these figures have changed since initially tracked in 2003.*
- *Roughly half of for-profit service firms expect volumes and budgets to remain the same in 2008; significantly more optimistic than under a third of manufacturing/processing firms. However, while only 36% of for-profit service firms expect budgets to decrease, roughly half of both for-profit service and manufacturing/processing firms expect relocation volumes to decline.*
- *More than half of international firms expect decreases in relocation volumes and budgets in 2009. Although four out of ten regional firms expect decreases, more than half of these firms expect relocation to stabilize this year. National firms are the most optimistic; roughly one-fifth expects increases in volumes and budgets in 2009.*

International Relocation Volume
Anticipated Volumes Drop; Less Severe Than Overall Expectations

Interestingly, the percentage of firms expecting decreases for international relocation in 2009 is slightly less severe, with just 39% predicting decreases. Still, this is more than double the percentages reported in 2005-2008 and indicates a softening of the international relocation market. But the expected retraction appears less severe than for the overall market, specifically among mid-size and large firms.

- *Over half (57%) of mid-size firms expect international relocation volumes to remain the same as 2008, compared to just 33% of mid-size firms predicting overall relocation volumes will remain stable.*
- *About one-fifth (22%) of large firms expect increases in international relocation, which is more optimistic than just 10% of large firms expecting increases in overall relocation volumes in 2009.*
- *Over half (53%) of for-profit service firms expect international volumes to remain stable in 2009 and about one fourth (26%) project decrease. Manufacturing/processing firms are significantly more pessimistic: 47% expect international volumes to decline.*

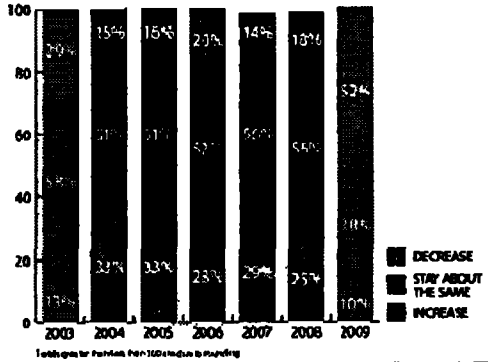
Economic Outlook
Predictions Less Optimistic for Individual Firm Performances, Overall Economy

Over a third of firms saw their own performances worsen in 2008, more than double the amount reported in the previous three years. Expectations for further worsening in 2009 are held by 40% of firms overall. The percentage of firms indicating the U.S. economy worsened jumped from 46% in 2007 to 83% in 2008, with 65% of firms expecting the U.S. economy to worsen further in 2009. Similarly, 59% of firms expect continuing deterioration in the U.S. real estate market during 2009; however, this is down significantly from last year (78%). Roughly a fourth of firms expect the U.S. economy and real estate market to stabilize this year.

- *The percentage of firms indicating their financial performance was worse than the previous year more than doubled among small and mid-size firms (31% vs. 15% and 38% vs. 16% respectively), and tripled among large firms from 2007 to 2008 (39% vs. 13%).*
- *Manufacturing/processing firms are significantly more pessimistic than for-profit service firms about financial performance projections. For-profit service firms are nearly evenly split for 2009 (34% expect better and 34% expect worse performances), but over half (53%) of manufacturing/processing firms project further worsening and only 20% expect improvement.*

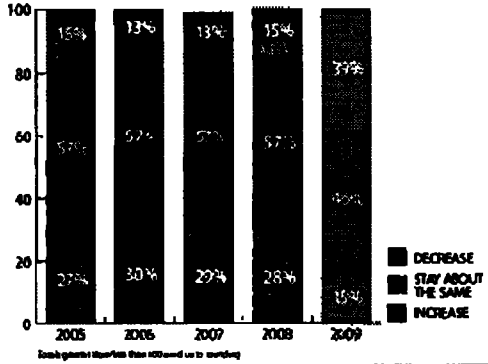
Question 4: Overall Relocation Volume

Compared to [last year], do you anticipate that the number of employees your company will relocate during [this year] will



Question 44b: International Relocation Volume

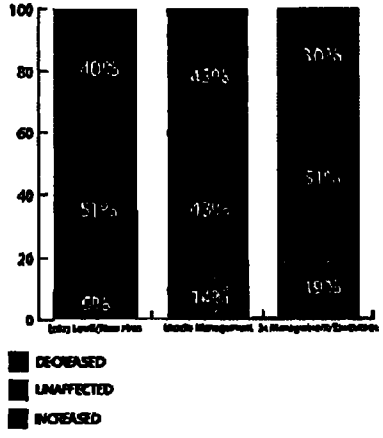
Compared to [last year], do you anticipate that the number of employees your company will relocate internationally during [this year] will



- *National firms are more optimistic about financial performance projections than regional or international firms. Nearly three-fourths of national firms expect their 2009 performances will be the same or better than 2008, while close to half of regional and international firms project their 2009 performances will be worse.*
- *Nationally operating firms are more likely to be optimistic about the U.S. economy; nearly half expect it to remain stable or improve this year, compared to roughly a third of regional and international firms.*

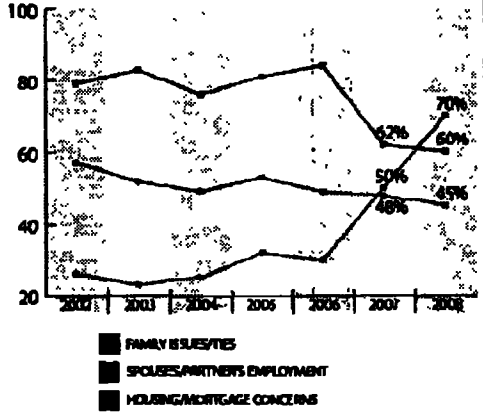
Question 6: Market Pressures Impact on Relocation Volumes

Have market pressures impacted your company's relocation volumes among the following types of employees?



Question 10a: Select Reasons Relocations Declined: 2002-2008

What reasons did employees give for declining relocation?



Market Impact on Relocations

Employee Category Determines Impact

When asked how market pressures impact relocation volumes among employee categories, firms overall indicate relocations for entry level/new hire and middle management employees were more likely to see decreases than relocations for senior managers and executives. Roughly half of mid-size and large firms report decreasing relocations for the first two categories, while only a third decreased relocations for senior managers/executives. Nearly one-fifth of firms overall report relocation volumes among senior level employees actually increased in response to market pressures.

- *About half of manufacturing/processing firms decreased the number of employee relocations for entry level/new hire and middle management employees, while only 4 out of 10 for-profit service firms did so.*
- *About half of international firms decreased the number of employee relocations for entry level/new hire and middle management employees, and over a third of national firms did so as well.*

Employees Declining Relocation

Significant Increases; Housing/Mortgage Issues Play Major Role

Market pressures aren't alone in pressing relocation volumes downward; employee reluctance to relocate appears on the rise as well. Roughly two-thirds (65%) of firms indicate employees declined the opportunity to relocate in 2008, and 28% report the number of declinations increased last year compared to 2007. Mid-size and large firms experienced the largest increases in declined relocations (28% vs. 11% in 2007 and 40% vs. 25% in 2007, respectively).

- *Seven out of ten national and international firms report declined relocations in 2008, compared to only 45% of regional firms. Additionally, over a third of national firms and over a fourth of international firms experienced increased declinations.*

Not surprisingly, the main reason firms cite for declined relocations in 2008 is housing/mortgage concerns (70%); this is an increase of 20 percentage points over 2007 (70% vs. 50%) and roughly two to three times the percentages cited from 2002-2006, surpassing family issues/ties (60%) for the first time. Family issues/ties was the reason cited 8 out of 10 times from 2002-2006, and dropped in 2007 as the U.S. real estate crisis began to deepen.

- *For large firms, housing/mortgage concerns is by far the biggest factor, at 84% indicate employees declined relocation for this reason.*
- *Housing/mortgage concerns ranks just above family issues/ties for mid-size firms (67% vs. 61%), the top two reasons employees declined relocations.*
- *Small firms reflect nearly equal impacts of three issues: family issues/ties (50%), housing/mortgage concerns (54%), and spouse/partner employment (54%).*
- *As for-profit service firms, housing/mortgage concerns surpass family issues/ties by a slim margin (77% vs. 71%), while at manufacturing/processing firms these two issues tie (64%).*

Relocation Incentives

Majority of Firms Offered Incentives in 2008; COLAs & Relocation Bonuses Most Popular; Highly Successful

Most firms, regardless of size, offered additional incentives to encourage employee relocations last year. Among firms offering incentives, roughly two-thirds (regardless of size) offered cost-of-living-adjustments (COLAs) in salary at the new location, and more than half offered relocation bonuses. For the vast majority of firms (8 out of 10 or more), regardless of size, additional incentives proved "almost always" or "frequently" successful in convincing an employee to relocate.

- *Regional firms are less likely than national and international firms to have offered additional incentives (48% vs. 67% and 61%).*
- *National firms offered COLAs and relocation bonuses with similar frequency (64% and 63%), but regional and international firms report they are more likely to have offered COLAs than relocation bonuses (58% vs. 48% and 61% vs. 53%, respectively).*
- *Manufacturing/processing firms offered COLAs and relocation bonuses with similar frequency (63% and 65%), while for-profit service firms are more likely to have offered COLAs than relocation bonuses (67% vs. 51%).*

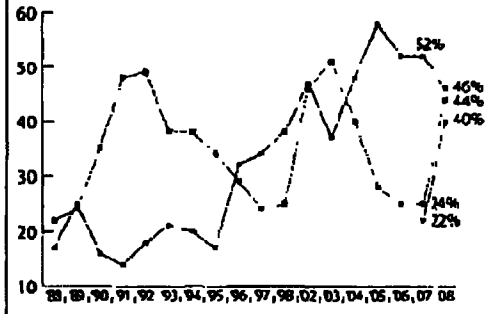
External Factors

Lack of Qualified People, Economic Conditions, and Real Estate Market Impact Hinge on Company Size

Overall, the impact of lack of qualified people locally, economic conditions and the real estate market are nearly equally weighted, revealing firms felt a triple-threat of external pressures on relocation. The percentage citing economic conditions is similar to 2002-2004, up significantly from 2005-2007. The lack of qualified people locally remains mostly similar over the past seven years, except for 2003 and 2005. Even with the rise of economic concerns and the real estate market as key external issues, the lack of qualified local talent remains a major issue for many firms, nearly equal or greater in impact to financial pressures. While the impact of economic conditions has been rising and falling over the past 25 years the lack of qualified local

Question 12: Select External Factors Impacting Relocation: 1988-2008

What external factors had the most significant impact on the number of your employee relocations [last year]?



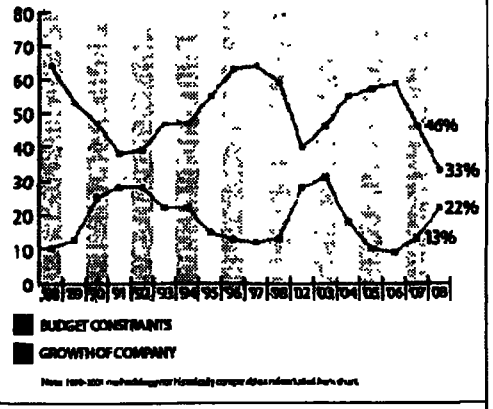
talent has been trending upward. However, the impact of these factors last year varies greatly by company size.

For small firms, a lack of qualified local talent (51%) was the top issue in 2008 as it has been for the past seven years, still outweighing economic concerns. For large firms, economic conditions (56%) and the real estate market (52%) were the top external factors. The percentage citing economic conditions is similar to 2002-2004 (60%, 70% and 57%) and jumped significantly from 2006-2007 (36% & 32%), the percentage citing real estate increased 15 percentage points from 2007.

For large firms, the lack of qualified local talent (37%) remains at similar levels to 2007 (39%) but falls from the highs seen in 2005-2006 (50%+). Mid-size firms felt the impact in 2008 of all three factors nearly equally (real estate market 50%, lack of qualified people locally 46%, and economic conditions 44%). However, the percentages indicating the real estate market and economic conditions as major factors more than doubled from 2007 (50% vs. 18% and 44% vs. 18%), while the lack of qualified people locally returned to levels similar to 2002-2004 (45%, 36% and 49%). Compared to the past three years, this reflects a dramatic increase in the impact of economic concerns and a moderate decrease in the impact of a lack of qualified local talent.

Question 13: Select Internal Factors Impacting Relocation: 1988-2008

What internal company conditions had the most significant impact on the number of your employee relocations [last year]?



Note: 1988-2001 methodology not statistically comparable to subsequent years' chart.

Additional Insights

- *Lack of qualified people locally and economic conditions top the list for manufacturing/processing firms (45% and 44%, respectively) with the real estate market a close second (36%). These three factors are practically equal in impact among for-profit firms (45%, 45% and 44%, respectively). One key difference: manufacturing/processing firms are nearly five times more likely to report the increase of competition, whether domestic or international, as playing a major role in their relocation volumes (29% vs. 6%) in 2008.*
- *Over half (55%) of regional firms cite the lack of qualified people locally, significantly more than any other issue. National firms, however, cite the lack of qualified people locally and economic conditions nearly equally (45% and 44%, respectively) with the real estate market a close second (35%). Among international firms, the top issues are economic conditions and the real estate market (47% and 46%, respectively) followed closely by the lack of qualified people locally (42%).*
- *International firms cite the real estate market much more frequently than regional or national firms as playing a major role in relocation volume last year (46% vs. 29% and 35%, respectively). Additionally, nearly one-fifth of international firms cite the growth of international competition, while virtually no regional or national firms do so.*

Internal Factors

Company Growth Retracts Further and Surpasses 16-Year Low; Budget Constraints Growing

Overall, the impact of company growth on relocation volumes in 2008 falls to 33%, past the lowest percentages cited in 1991-1992 (38% and 39%) and significantly below 2003-2007, indicating significant retraction compared to the past five years. Additionally, the impact of budget constraints increases significantly compared to the past three years, although still lower than 2002-2003. Regardless of size, the percentages of firms citing company growth as a major factor impacting relocation volumes are the lowest in seven years, and the percentages of firms citing budget constraints are roughly double compared to 2005-2007, lower than 2002-2003 but near 2004.

While the top internal factor varies by company size, the dramatic decrease in company growth and increase in budget constraints is the key trend across all size firms. Nearly half of large firms (45%) indicate corporate reorganization as the biggest internal factor, with knowledge/skills transfers (37%) in second place followed by company growth (34%) and budget constraints (33%). The impact of corporate reorganization has been steadily increasing the past two years and is at similar levels to 2002-2005, while the impact of knowledge/skills transfers remains steady for large firms. Mid-size firms indicate promotions/resignations as the largest internal factor (42%) affecting relocations in 2008. Typically second to company growth, this factor last showed primacy in 2002 (47%). Three internal factors impacted small firms nearly equally: company growth (34%), knowledge/skills transfers (33%), and promotions/resignations (32%). The percentage indicating promotions/resignations is similar to the past six years, but the percentage indicating knowledge/skills transfers has significantly increased from 2005-2006 (19% and 18%, respectively).

- *Manufacturing/processing firms are more likely to report decreased production and facility closings as having an impact on relocation in 2008 (14% vs. 6% and 18% vs. 10%), and for-profit service firms are more likely to report expansion into new territories (25% vs. 15%).*
- *International firms report the impact of company growth, corporate reorganization, and knowledge/skills transfers at nearly equal levels in 2008 (36%, 36%, and 35%). Regional firms cite promotions/resignations (41%) as their top internal issue, and national firms report promotions/resignations and company growth nearly equally (43% and 41%).*
- *Overall, promotions/resignations had a significantly greater impact on regional and national firms in 2008 (41% and 43% vs. 29%), while company growth and the expansion into new territories were more impactful at national and international firms (41% and 36% vs. 19% and 23% and 19% vs. 9%). International firms also felt the closing of facilities (17% vs. 6%) and budget constraints (26% vs. 13%) more heavily than did regional firms and they are more likely to report acquisitions/mergers (17% vs. 3% and 10%), corporate reorganization (35% vs. 19% and 22%) and international expansion (21% vs. 1% and 2%) impacted relocation volumes in 2008 than regional and national firms.*

Outsourcing

Slight Uptick, Overall Similar to 2002-2007; Varies by Company Size

Sixty-one percent of companies outsourced relocation services during 2008, up slightly from 2005-2007. This is identical to 2002 and down slightly from 2003-2004, but similar overall to the past six years. Generally, mid-size and large companies continue to outsource a significantly greater variety of relocation services than small companies do, and small firms are still much less likely to outsource relocation services than are mid-size and large firms. A fourth or more of both mid-size and large companies outsource the relocation-related services listed in the survey.

Overall Shifts

- *Close to half (45%) of firms outsourced real estate sales/marketing last year, significantly more than in 2005 and 2007 (36% and 38%).*
- *The outsourcing of monitoring household goods shipments is up slightly from 2007 (34% vs. 28%) and significantly higher than in 2002 and 2004-2005 (when roughly a fourth or less of firms did so).*
- *Significantly more companies outsourced counseling about company policy than in 2005-2007 (28% vs. one-fifth or less), similar to 2002-2004 (23%, 27% and 24%).*
- *Nearly a third (30%) of firms outsourced expense tracking/reimbursement, a significant jump from roughly one-fifth or less in 2005 and 2007.*
- *The percentage of firms outsourcing the audit/payment of invoice returns to 2002-2004 levels (25% vs. 24% and 27%) after dropping significantly in 2005 and 2007 (18% and 18%).*
- *The only significant differences between large and mid-size firms among individual outsourcing categories are in counseling about company policy, real estate sales/marketing and real estate purchase (large firms are more likely to outsource these services). For all other outsourced items, mid-size and large firm outsourcing levels appear similar in 2008.*

Outsourcing Changes by Company Size

Slightly more mid-size firms outsourced in 2008 than in 2007 (69% vs. 62%) with increases occurring across individual categories. Compared to 2005-2007, these firms increased outsourcing the counseling about company policy, orientation tours, family transportation/accommodation arrangements, household goods carrier contracts, audit/payment of invoices, claims assistance and supplementary services, returning to 2002-2004 levels. Expense tracking/reimbursement and shipment monitoring outsourcing see significant increases over 2005-2006 and moderate gains over 2007.

Similar to the past six years, the majority (84%) of large firms outsourced. Percentages are similar to last year across categories, but some changes of note occurred. The outsourcing of counseling about company policy had dropped in 2005-2007 (38% and 40%) but now returns to 2002-2004 levels (49%). The percentage of firms outsourcing family transportation/accommodation arrangements falls from roughly half in 2006-2007 to 37% in 2008. The outsourcing of the household goods carrier contract remains similar to the past six years (42%) but trends lower than in 2002-2003 (52% and 55%).

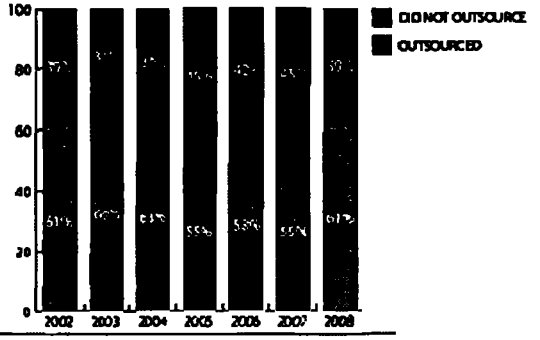
Small companies that outsource were just as likely to outsource the contract of a household goods carrier as they were to outsource real estate sales/marketing services (22% vs. 23%), similar to 2007. Overall, outsourcing across categories is similar to the past two years, maintaining increases gained over 2005 or growing slightly (orientation tours is the exception – 8% vs. 9% in 2005).

Additional Insights

- *International firms are more likely than national or regional firms to outsource relocation services (76% vs. 52% and 39%).*

Question 24: Outsourcing

Respondents were given a list of possible outsourced relocation services, the answers received indicate that



- *The majority of both manufacturing/processing and for-profit service firms outsourced relocation services in 2008 (64% and 61% respectively). However, manufacturing/processing firms are more likely to have outsourced the arrangement of family transportation and accommodations (40% vs. 27%), tax gross-up assistance (38% vs. 20%), counseling about company policy (28% vs. 20%), the audit and/or payment of invoices (26% vs. 23%), and supplementary services (29% vs. 14%).*
- *Across regions of the U.S., outsourcing was similar except for the Northeast, where the percentage was the highest (79% vs. roughly half to two-thirds of firms in other regions). Regionally, Northeastern and Midwestern firms outsource real estate sales/marketing, real estate purchases, household goods carrier contracts, shipment monitoring, expense tracking/reimbursement, tax gross-up assistance and supplementary services more often than firms in most other regions.*

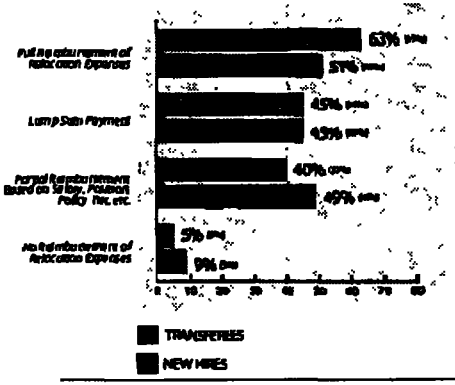
Relocation Reimbursement/Payment

Full Reimbursement and Lump Sum Payments Remain Stable; Partial Reimbursement for New Hires Increases Significantly

After dropping significantly in 2006 and 2007, full reimbursement for transferees or new hires maintains last year's rebound to near 2003-2005 levels (although still trending lower than these historical highs). Additionally, close to half of companies continue to utilize lump sum payments in 2009 for either employee group, similar to 2008 and significantly above 2003-2007. The percentages of firms offering partial reimbursement to transferees and new hires are the highest in seven years.

Question 28: Relocation Reimbursement Methods

To what extent does your company reimburse relocation expenses of (Transferees/New Hires)?



The majority of firms still offer full reimbursement of moving expenses as an option for transferees, although the percentages of firms offering either lump sum or partial reimbursement continue to trend upwards. Interestingly, the percentage of firms offering partial reimbursement to new hires this year jumps significantly from 2008, surpassing lump sum payments. For new hires, reimbursement methods appear greatly interchangeable. About half of firms offer full, lump sum, or partial reimbursement, revealing a nearly equal probability for any of the three methods to be used. For transferees, full reimbursement is still the most common, but lump sum payments and partial reimbursement continue to gain ground.

- *While the majority (59%) of large firms offer full reimbursement to new hires, roughly half offer lump sum payments and/or partial reimbursement as well.*
- *Small firms are the least likely this year to offer lump sum payments to new hires (38% vs. 51% and 47%) or transferees (38% vs. 49%).*
- *About half of all size firms offer partial reimbursement to new hires.*

Additional Insights

- *Regional firms are much less likely than national firms to offer lump sum payments to transferees or new hires (33% vs. 54% and 37% vs. 52%). International and national firms show a similar likelihood (45% vs. 54% and 44% vs. 52%, respectively).*
- *Most manufacturing/processing firms and for-profit service firms (65% and 61%) offer full reimbursement to transferees. Manufacturing/processing firms are more likely to offer lump sum payments (52%) than partial reimbursement (37%), while for-profit service firms are almost equally likely to offer either (40% and 41%).*
- *Manufacturing/processing firms show the least discrimination in reimbursement methods for new hires; close to half or more offer each type (full, lump sum, or partial). Roughly half or more of for-profit service firms offer full or partial reimbursement, while fewer (39%) offer lump sum payments.*
- *A majority of firms in every region of the U.S. offer full reimbursement to transferees. For new hires, over half of firms in the Northeast, South, and West/Central regions offer full reimbursement; Midwestern and Southwestern firms are least likely (44% and 35%). Close to half of firms in all regions offer partial reimbursement to new hires.*
- *Roughly half of Northeastern and Midwestern firms (48% and 53%) offer lump sum payments to transferees; more than a third of firms in other regions do so. While close to half or more of firms in most regions offer lump sum payments to new hires as well, significantly fewer firms in the South do so (28%).*

As in the past six years, the majority of firms, regardless of size, reports that carrier transportation expenses are "paid directly by the company" for either transferees or new hires. However, small firms continue to be more likely than large or mid-size firms to have moving expenses paid by the employee and reimbursed.

- *The majority of both manufacturing/processing and for-profit service firms pay transportation expenses directly for transferees (90% and 87%) and new hires (89% and 77%); however, manufacturing/processing firms are more likely than for-profit service firms to do this for new hires.*
- *Regional and national firms are more likely than international firms to require transferees to pay transportation expenses and then reimburse them (28% and 25% vs. 14%). For new hires, regional firms are by far more likely than national or international firms to follow this policy (41% vs. 22% and 17%).*

Cost Coverage

The majority (90%) of companies reimburses or pays for some relocation costs for transferees or new hires, similar to the past six years. Overall, coverages of most core relocation expenses (i.e., pack all items, move an automobile, unpack all items, etc.) remain similar to last year and some increase slightly. However, the percentage of firms offering to move unlimited weight drops significantly from 2008 (38% vs. 46%), although the remains similar to 2003 - 2007. Fewer companies of all sizes cover this item. Also, while slightly greater percentages of mid-size and small firms cover moving an automobile, significantly fewer large firms do so (84% vs. 94%).

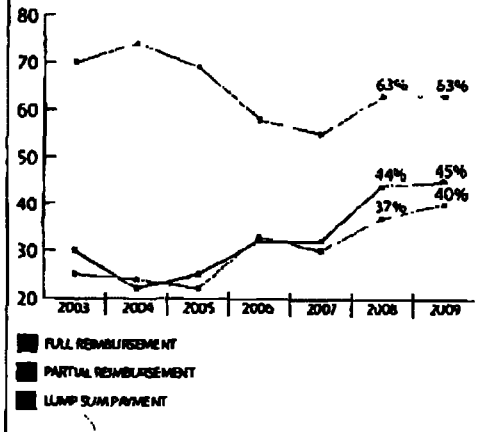
Half or more of companies indicate they reimburse/pay for:

- *Pack all items (79% similar to the past six years except 2006 (71%))*
- *Move an automobile (72%, similar to the past six years)*
- *Move exercise equipment (56%, similar to the past six years)*
- *Unpack all items (51%, similar to the past two years)*

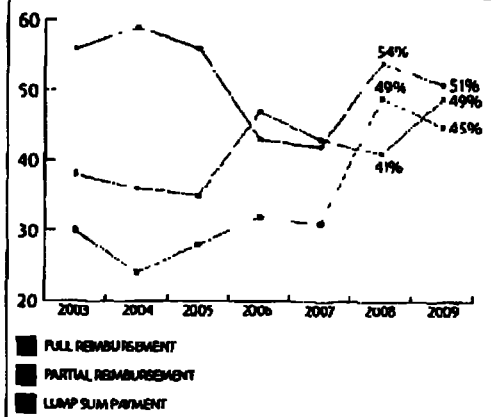
Overall, percentages of companies offering "non-core" relocation benefits to transferees or new hires decrease slightly compared to last year, although most remain similar to 2008. The exception is firms that pay to move collections of highly valuable objects, which drops significantly from last year (36% vs. 43%) but remains above 2006-2007 (27%) and close to 2003-2005 levels (30%+). This change is driven primarily by a significant decrease in large firms (37% vs. 61%) offering this coverage.

- *Internationally operating firms are more likely than national or regional firms to offer the following to transferees or new hires.*
  - *Pack all items (88% vs. 75% and 68%)*
  - *Move an automobile (83% vs. 65% and 55%)*
  - *Move a second automobile (56% vs. 39% and 30%)*
  - *Move pets (43% vs. 25% and 14%)*

Question 28: Transferee Reimbursement 2003-2009



Question 28: New Hire Reimbursement 2003-2009

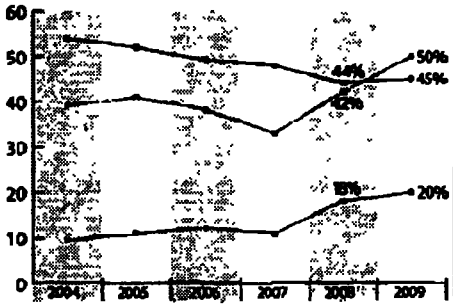


- *Internationally operating firms are more likely than regional firms to:*
  - *Move unlimited weight (42% vs. 29%)*
  - *Offer permanent/extended storage of some possessions (61% vs. 29%)*
- *Companies in the Midwest and Northeast are the most likely to reimburse/pay for the packing of all items (88% and 86%) while companies in the South are least likely (70%). Over three-fourths of firms in other regions do so for transferees or new hires.*
- *Midwestern and Northeastern firms are more likely to pay for permanent/extended storage than are firms in the Southwest (40% and 42% vs. 21%); just over a third of firms in other regions indicate they do so for transferees or new hires.*
- *West/Central firms are the most likely to reimburse/pay for moving a second automobile (57%), while companies in the South are least likely (41%); roughly half of firms in other regions do so for transferees or new hires.*
- *Midwestern and Southern firms are the most likely to reimburse/pay for moving recreation and lawn equipment (55% and 51%), while companies in the Northeast are least likely (39%); over 40% of firms in other regions of the country do so for transferees or new hires.*

Specialized Assistance for Homeowners/Renters

The majority of firms offers specialized relocation assistance for employees who are homeowners, although small firms remain less likely than mid-size or large firms to offer most types of assistance. Over the past three years the percentages of firms offering the different types of homeowner-specific assistance have remained mostly similar, and those offering storage and covering losses-on-sale have increased steadily and are significantly greater than in 2007 (59% vs. 50% and 27% vs. 20%, respectively). Compared to last year, the percentages of firms offering each type of homeowner assistance increase slightly overall, except for slight decreases in those offering home-finding trips and duplicate housing assistance. The largest decreases occur for these items at small firms: significantly fewer firms offer duplicate housing assistance compared to 2008 (10% vs. 23%) and the percentage offering home-finding trips fell ten percent from last year (49% vs. 59%).

Questions 34 & 38a: Employment Assistance: Trailing Spouse/Partner



*Percent of that class in pre-hire pay not taken from who don't have

For homeowners, more than half of firms offer the following to transferees or new hires:

- *Temporary housing allowance (76%)*
- *Home-finding trips (68%)*
- *Storage (59%)*
- *Reimburse/pay for home sale costs (55%)*
- *Reimburse/pay for home purchase costs (54%)*

The majority of firms offer specialized relocation assistance for employees who are renters, although small firms remain less likely than mid-size or large firms to offer most of the types of assistance listed. Overall, the percentages of firms offering each type of renter-specific assistance stay the same or decrease slightly from last year with two exceptions: more firms offer to reimburse/pay for lease cancellation (60% vs. 55%) and significantly more firms offer to reimburse/pay for apartment search/finder's fees (36% vs. 27%). Historically, renter-specific coverage is similar across categories over the past seven years with two exceptions: significantly more firms offer storage than in 2003, 2005-2006 (5.1% vs. 4.1%) and significantly fewer reimburse/pay for hook-up fees than in 2003-2007 (20% vs. 27%, 30% and 31%).

For renters, more than half of firms offer the following to transferees or new hires:

- *Temporary housing allowance (67%)*
- *Home-finding trips (61%)*
- *Reimburse/pay for lease cancellation (60%)*
- *Storage (51%)*

Manufacturing/processing firms are more likely than for-profit service firms to offer specialized assistance to homeowners (93% vs. 80%) and to renters (94% vs. 80%). International firms are more likely than regional or national firms to offer homeowner (96% vs. 77%) and renter-specific assistance (96% vs. 77% and 84%).

Trailing Spouse/Partner Assistance

Employment Assistance Increases, Potential Relationship Between Trailing Spouse Gender Emerges

Half of all firms offer employment assistance to the spouse or partner, more than at anytime in the past six years. While the percentages of mid-size and large firms increase, the largest jump is at small firms (48% versus roughly one-third 2003-2008). Interestingly, the upward trend over the past two years coincides with increasing percentages of male trailing spouses. This potential correlation is especially pronounced at small firms where the percentage of male trailing spouses more than doubled since the 2007 survey (2.1% vs. 8%) and one out of every three relocations have typically utilized spouse employment assistance since 2005.

- *Large firms are more likely than mid-size or small firms to offer employment assistance to a relocating employee's spouse/partner (61% vs. 46% and 48%).*
- *Most small firms that offer employment assistance provide networking assistance (83%); they provide this more often than mid-size or large firms (57% and 39%). Small firms are also more likely than mid-size or large firms to find employment within the company for an employee's spouse/partner (31% vs. 18%).*
- *Mid-size and large firms are more likely than small firms to offer resume preparation assistance (65% and 49% vs. 29%) and outplacement/career services from an outside firm (37% and 49% vs. 14%), while large firms are more likely than small or mid-size firms to offer interviewing skills training (37% vs. 14% and 20%).*
- *Employment assistance is utilized in nearly one out of every four relocations overall; however, relocating employees utilize these services nearly twice as often at small firms than large firms on average (31% vs. 16%).*

Even with an increase in spouse/partner employment assistance offered over last year, the percentage of firms indicating a spouse's/partner's employment almost always or frequently affects an employee's relocation remains similar to last year (42% vs. 39%). This is significantly lower than the high in 2007 (52%) and comparable to what was reported in 2003-2006 (42% to 44%).

- *Small and mid-size firms (48% and 44%) are more likely than large firms (31%) to indicate the employment status of a spouse or partner often impacts relocations.*

International Relocation Shifts

Lower Expectations for Short-Term Assignments

Last year, short-term international relocations (less than 12 months in length) increased across companies of all sizes. This year, firms appear to be shifting back to lengths that are more traditional. Among small firms, 21% report short-term assignments are the standard practice, but fewer mid-size or large firms (12% and 9%) do so, similar to 2006-2007.

Overall, while most firms expect short-term international relocations to remain similar to last year, significantly more expect decreases than in the past four years (24% vs. 9%, 11% and 8%) and the percentage expecting increases is about half of what it was in 2005-2007 (13% vs. 23%, 27% and 24%).

- *Mid-size and small firms express the greatest expectation for a decline in the use of temporary relocations internationally compared to the past four years (31% vs. 3%-19%).*
- *Regarding increases in short-term international assignments, expectations among large firms have been progressively declining since 2005 and are about half of what they were four years ago (19% vs. 40%). Expectations among mid-size firms peaked in 2007 (28%) and drop significantly for 2009 (12%).*
- *One of the biggest shifts for small firms is typical assignment duration; while a similar percentage of small firms indicate short-term international relocations are the norm, almost half now say the typical duration is three years or more. This is a shift from 2006-2008, when less than a third reported assignments of this length were standard. The typical international assignment is now longer for small firms than for mid-size or large firms.*
- *For-profit service firms are more likely than manufacturing/processing firms to have typical international assignment durations of less than 12 months (21% vs. 5%).*

International Outsourcing

Overall Level Increases Significantly; More Firms of All Sizes Outsourcing

Significantly more firms outsourced internationally in 2008 than in 2007 (74% vs. 63%) and in 2004 (58%). While similar to 2003 and 2005-2006 (70%, 62% and 68%), overall this is the highest percentage in six years. Additionally, increases occur in every outsourcing category compared to 2007, significantly in international shipment monitoring (46% vs. 32%), destination service/orientation tours (43% vs. 31%), counseling about company policy (36% vs. 26%), counseling about the planning/details of international relocation (35% vs. 22%), arrangement of family's transportation (35% vs. 23%), and international real estate services (25% vs. 16%). Overall, the percentages for each service nearly meet or exceed highs over the past five years.

The majority of both mid-size and large firms outsource international relocation services, as in the past five years, but this is the first year a majority (52%) of small firms indicate doing so. This is similar to 2007 (49%), greater than 2006 (38%) and nearly double 2004 and 2005 (28% and 29%). The percentage of mid-size firms outsourcing internationally declined progressively in 2006 and 2007 (64% and 59%), but increased significantly in 2008 (76% vs. 59%), yielding levels similar to 2003 and 2005 (73% and 75%). The percentage of large firms outsourcing internationally is nearly identical to 2008 and 2005-2006 (84% vs. 85%, 83% and 82%) after trending slightly lower in 2004 and 2007 (78% and 77%); more than half of these firms outsourced destination services/orientation tours, securing rental property, international shipment monitoring, household goods carrier contracts, and intercultural and language training.

- *More small firms outsourced international services in 2007-2008 than in the past four years. The percentages outsourcing international shipment monitoring, the management of international relocation programs, intercultural and language training, and counseling about company policy are the highest in six years; percentages for visa and immigration services, arrangement of temporary accommodations for families, and repatriation services also increase. However, compared to 2006, moderate decreases in outsourcing international relocation planning/details counseling (10% vs. 18%), international real estate services (7% vs. 13%), and securing rental property (14% vs. 21%), occur overall.*
- *While the percentage of small firms outsourcing international real estate services falls in 2008, mid-size and large firms are more likely to have outsourced these services than in 2007 (29% vs. 17% and 32% vs. 17%, respectively). Among all firms, the percentage outsourcing real estate services increases significantly (25% vs. 16%), similar to 2003-2006 (26%, 25%, and 26%).*
- *Outsourcing of international relocation services among mid-size firms increases over 2007, nearly meeting or exceeding highs over the past five years in each category, except for securing rental property and international relocation program management. Outsourcing for these two services increases over 2007, but falls short of the past five-year highs (40% vs. 47% and 31% vs. 40%, respectively).*
- *Overall, outsourcing of international relocation services among large firms increases over 2007, nearly meeting or exceeding highs over the past five years in each category, except for visa and immigration services and temporary family accommodation arrangements (two new additions to the survey last year). The percentages of large firms outsourcing these services remain similar to 2007 but decrease slightly from last year (47% vs. 54% and 41% vs. 52%, respectively).*
- *While manufacturing/processing and for-profit service firms share similar likelihoods of outsourcing most international relocation services, for-profit service firms are more likely to outsource international shipment monitoring (54% vs. 42%) and relocation planning/details counseling (51% vs. 33%).*
- *The year, a fourth or more of companies who relocate employees internationally outsource the international relocation services listed in this survey.*

Among companies that outsourced relocation services domestically in 2008, the percentage that did so internationally is the highest in six years (85%) similar to 2003, 2005-2007 (82%, 79% and 80%) and significantly greater than in 2004 (70%). This year, large and mid-size firms share similar likelihoods to outsource internationally and to outsource each service with three exceptions: large firms remain more likely to outsource securing rental property, destination services/orientation tours and intercultural and language training. Both mid-size and large firms this year are more likely to outsource international relocation services than small firms, as well as a greater number and variety of these services. However, firms of all sizes share a similar likelihood to outsource visa and immigration services.

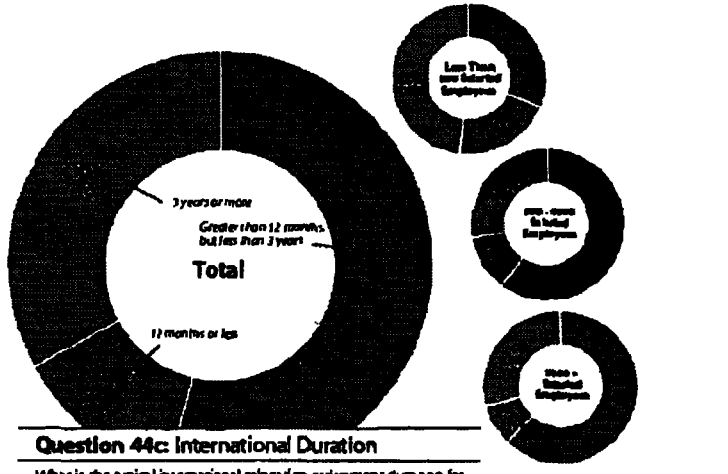
International vs. Domestic Policy

Additional Considerations Increase; International Employment Assistance Stable

Most firms (83%) report differences between domestic and international relocation policies, similar to the past six years. Overall, the amount of considerations recovers after declining last year, as nearly every policy consideration category experience an increase in the number of firms offering it to internationally relocating employees. Additionally, the percentages of firms offering higher relocation and rental housing allowances are at the highest levels in seven years. However, less than a third (31%) of firms offer additional leave time, similar to last year (30%) and significantly less than about half of firms offering this consideration from 2003-2007.

- *While percentages for most policy considerations among large firms are nearly the same or increase slightly, those offering additional leave time continues to decline (25% vs. 40% last year) and significantly below 2003-2007 (60%+).*
- *After dropping considerably last year, additional considerations at mid-size firms for internationally relocating employees bounce back close to historical highs from the past six years. The largest increases are in additional tax considerations (63% vs. 47%), higher relocation allowances (54% vs. 38%), increased allowances for permanent storage (51% vs. 34%), allowances for children to attend certain schools (51% vs. 38%), higher rental housing allowances (49% vs. 32%), intercultural and language training (49% vs. 32%) and additional leave time (37% vs. 14%). Overall, the percentages of mid-size firms offering higher relocation allowances, extended per diem charges, and higher rental housing allowances are the highest in seven years.*
- *While mid-size and large firms are policy considerations increase or stay nearly the same compared to last year, small firms see slight decreases across categories, except for allowances for children to attend certain schools (21% vs. 13%), intercultural and language training (30% vs. 28%), and extended per diem charges (24% vs. 15%). However, the percentages of small firms offering individual considerations remain similar to the past six years, except for allowances for children to attend certain schools and increased permanent storage allowance, which are significantly lower than historical highs (21% vs. 44% and 19% vs. 40%).*
- *Large firms remain more likely than small firms to offer additional considerations overall, and mid-size and large firms share similar likelihoods for offering most international policy considerations. However, large firms are more likely than mid-size firms to offer intercultural and language training (60% vs. 49%). Overall, both mid-size and large firms offer a larger number and variety of policy considerations to internationally relocating employees than small firms.*
- *The majorities of manufacturing/processing and for-profit service firms offer additional policy considerations for internationally relocating employees (85% and 84% respectively); however, manufacturing/processing firms are more likely to offer higher relocation allowances (52% vs. 33%) while for-profit service firms are more likely to offer extended per diem charges (37% vs. 23%).*

Forty-four percent of companies offer employment assistance to spouses or partners relocating internationally, similar to the past two years (42% and 46%) and maintaining increases established over 2003-2006 (17%, 22%, 24% and 33% respectively). More small firms offer this assistance than did last year (45% vs. 26%), the highest percentage in the past seven years. While the percentage of mid-size firms is similar to last year (38% vs. 41%), it is down slightly from the high in 2007 (46%), but remains substantially above 2003-2005 when roughly one-fourth or fewer offered this assistance. Half of large firms offer this assistance, similar to 2006-2008 (45%, 47%, and 55%) and significantly more than in 2003-2005 (roughly a third or less). Small firms are more likely than mid-size or large firms to offer networking assistance (38% vs. 22% and 13%) while about one-fifth of all size firms pay for outplacement/career services or a work visa. ■



Question 44c: International Duration

What is the typical international relocation assignment duration for employees at your company?

( ) Indicates Results from Previous Years [illegible]

The following information is based upon the findings of Atlas World Group's 42nd Annual Survey of Corporate Relocation Policies conducted from January 12 through February 28, 2009 via the Internet. This year, 320 online questionnaires were completed. Unless otherwise noted, all data refers to domestic relocations occuring in 2008. Multiple choice questions add to 100% (+/- 1%) due to rounding, unless otherwise noted. Other questions totaling above 100% are due to multiple responses. Complete findings are as follows:

(For further details and graphical representations of all the data contained in this report, please go to atlasworldgroup.com/survey)

A. RELOCATION VOLUMES & BUDGETS

1. How many employees did your company relocate in 2008?

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
2%	None	3%	3%	1%
28%	1-9	78%	23%	5%
12%	10-19	8%	26%	4%
10%	20-49	8%	13%	8%
11%	50-99	3%	10%	13%
10%	100-199	1%	9%	25%
7%	200-399	1%	8%	14%
8%	400 or more	1%	3%	27%
1%	Don't know	0%	0%	2%
10-19	Median	1-9	10-19	100-199

2. Compared to 2007, did the number of employees you relocated in 2008...

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
27%	Increase	30%	26%	25%
48%	Stay About the Same	55%	48%	39%
25%	Decrease	15%	28%	36%

3. Compared to 2007, did your 2008 relocation budget...

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
37%	Increase	35%	38%	40%
44%	Stay About the Same	52%	41%	35%
19%	Decrease	13%	21%	25%

4. Compared to 2008, do you anticipate that the number of employees your company will relocate during 2009 will...

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
10%	Increase	10%	11%	10%
38%	Stay About the Same	41%	35%	36%
52%	Decrease	48%	54%	54%

5. Compared to 2008, do you anticipate that your relocation budget in 2009 will...

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
13%	Increase	12%	13%	16%
38%	Stay About the Same	45%	32%	36%
48%	Decrease	43%	55%	48%

6. Have market pressures impacted your company's relocation volumes among the following types of employees?

Entry Level/New Hires

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
9%	Yes – Increased # of Relocations	8%	11%	11%
40%	Yes – Decreased # of Relocations	29%	43%	53%
51%	No – Volumes Unaffected by Market	63%	46%	36%

Middle Management

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
14%	Yes – Increased # of Relocations	14%	14%	14%
43%	Yes – Decreased # of Relocations	31%	48%	54%
43%	No – Volumes Unaffected by Market	56%	38%	31%

Sr. Management/Executives

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
19%	Yes – Increased # of Relocations	22%	17%	17%
30%	Yes – Decreased # of Relocations	26%	33%	34%
51%	No – Volumes Unaffected by Market	52%	50%	49%

7. Did any employees decline the opportunity to relocate in 2008?*

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
65%	% of companies answering "Yes"	39%	75%	89%

*Includes those who don't know

8. Does declining the opportunity to relocate usually hinder an employee's career?

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
38%	% of companies answering "Yes"	39%	38%	36%

9a. Did your company offer additional incentives to encourage employee relocations over the past year?

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
60%	% of companies indicating "Yes"	54%	64%	63%

9b. Which of the following additional incentives did your company offer to encourage employee relocations over the past year?

Of those who offered incentives: (see Question 9a)		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
68%	Cost-of-living-adjustments (COLAs) in salary at new location	64%	67%	69%
58%	Relocation bonuses	60%	56%	52%
20%	Mortgage payoffs (if property sale won't cover employee mortgage debt)	19%	21%	21%
17%	Telecommuting option (one or two days each week) to curtail commuting costs	18%	18%	15%
12%	Guarantee of employment contract (for specified length of time) if relocation accepted	12%	10%	15%
20%	Other	10%	26%	27%

9c. How often did offering the above incentives prove successful in convincing an employee to relocate?*

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
33%	Almost always	25%	43%	20%
51%	Frequently	54%	45%	56%
15%	Seldom	21%	9%	16%
1%	Never	0%	3%	0%

*Includes not applicable/don't know responses

10. Did the number of employees declining relocation in 2008...*

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
28%	Increase from the 2007 level	19%	28%	40%
61%	Remain about the same as the 2007 level	64%	65%	51%
12%	Decrease from the 2007 level	17%	7%	9%

*Includes those who don't know

10a. What reasons did employees give for declining relocation?

Of those who answered "Yes" to Question 7:	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
78% Housing/mortgage concerns	54%	87%	86%
65% Family issues/ties	59%	61%	59%
45% Spouse's/partner's employment	54%	42%	41%
41% Cost of living in new location	23%	48%	44%
38% No desire to relocate	34%	38%	19%
29% Personal reasons (non-disclosed)	21%	27%	37%
5% Other	8%	3%	5%

11a. How many employees did your company relocate in 2008 in each of the following:

Within the U.S.

Of those relocating employees: (see Question 1)	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
6% None	16%	4%	2%
38% 1-9	72%	28%	6%
12% 10-19	7%	25%	2%
10% 20-49	7%	13%	10%
11% 50-99	4%	13%	18%
22% 100 or more	1%	19%	57%
1% Don't know	0%	8%	4%

Between the U.S. and Canada

Of those relocating employees: (see Question 1)	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
70% None	92%	67%	45%
29% 1-9	8%	28%	38%
2% 10-19	0%	2%	5%
1% 20-49	0%	1%	1%
0% 50-99	0%	0%	0%
0% 100 or more	0%	0%	0%
6% Don't know	0%	3%	11%

Between the U.S. and Another Country

Of those relocating employees: (see Question 1)	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
52% None	78%	48%	21%
33% 1-9	22%	39%	38%
5% 10-19	0%	0%	10%
3% 20-49	0%	2%	7%
1% 50-99	0%	1%	4%
4% 100 or more	0%	2%	12%
3% Don't know	0%	3%	9%

Within a Single Foreign Country

Of those relocating employees: (see Question 1)	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
72% None	95%	68%	44%
12% 1-9	4%	19%	13%
2% 10-19	1%	1%	4%
2% 20-49	0%	1%	6%
1% 50-99	0%	0%	2%
0% 100 or more	0%	0%	0%
12% Don't know	0%	10%	30%

Between Two Foreign Countries

Of those relocating employees: (see Question 1)	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
72% None	96%	78%	41%
12% 1-9	4%	19%	13%
2% 10-19	0%	3%	4%
1% 20-49	0%	0%	5%
0% 50-99	0%	0%	0%
2% 100 or more	0%	0%	7%
11% Don't know	0%	0%	29%

11b. What was the most frequent destination of transfer...

*Within the U.S.**

Of those relocating employees: (see Question 1)	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
31% Northeast	28%	30%	38%
31% Midwest	29%	25%	43%
23% South	25%	27%	15%
20% West	18%	21%	22%
13% Southwest	13%	12%	15%
8% Central	6%	5%	14%

*excludes N/A responses

*Between the U.S. and Another Country/Region**

Of those relocating employees (see Question 1)	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
40% Asia/Pacific Rim	29%	42%	43%
34% Europe	29%	25%	46%
11% United States	11%	10%	13%
11% United Kingdom	4%	8%	18%
10% Canada	11%	10%	10%
5% Africa	11%	3%	3%
5% Middle East	4%	2%	10%
3% Central America/Carribean	7%	2%	2%
3% South America	0%	3%	3%
5% Other	7%	7%	3%

*excludes N/A responses

*Within a Single Foreign Country/Region**

Of those relocating employees: (see Question 1)
35% Europe
22% Asia/Pacific Rim
22% United States
9% United Kingdom
7% Central America/Carribean
4% Canada
3% Middle East
1% Africa
1% South America
6% Other

*excludes N/A responses/only composite score reportable due to low base size of responses

*Between Two Foreign Countries/Regions**

Of those relocating employees: (see Question 1)
45% Europe
30% Asia/Pacific Rim
19% United States
10% United Kingdom
6% Middle East
4% South America
4% Canada
3% Africa
3% Central America/Carribean
3% Other

*excludes N/A responses/only composite score reportable due to low base size of responses

B. FACTORS IMPACTING RELOCATIONS

12. What external factors had the most significant impact on the number of your employee relocations in 2008?

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
13%	External conditions had no impact	19%	10%	7%
46%	Lack of qualified people locally	51%	46%	37%
44%	Economic conditions	35%	44%	55%
40%	Real estate market	23%	50%	52%
10%	Growth of international competition	6%	13%	12%
7%	Growth of domestic competition	7%	9%	8%
3%	Natural disaster - domestic or international (i.e. hurricane, earthquake, flooding, wildfire, etc.)	2%	3%	4%
3%	War/terrorism	1%	3%	5%
3%	Other	2%	2%	6%

13. What internal company conditions had the most significant impact on the number of your employee relocations in 2008?

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
8%	Internal conditions had no impact	15%	4%	4%
35%	Promotions/resignations	32%	42%	30%
33%	Knowledge/skills transfers	33%	29%	37%
33%	Growth of company	34%	33%	34%
29%	Corporate reorganization	18%	29%	45%
22%	Budget constraints	15%	20%	32%
18%	Expansion into new territories	16%	19%	19%
18%	Acquisitions/mergers	10%	20%	25%
13%	Closing of facility	8%	16%	20%
12%	International expansion	8%	16%	14%
9%	Use of short-term assignments	6%	10%	13%
9%	Expansion of facility	6%	11%	11%
7%	Increased production	8%	8%	7%
7%	Decreased production	4%	9%	8%
4%	Other	6%	4%	1%

14. Compared to 2007, from your company's perspective, please rate the following in 2008:

Your company's overall financial performance

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
43%	Better than 2007	47%	45%	36%
22%	Same as in 2007	23%	19%	25%
35%	Worse than 2007	31%	36%	39%

The U.S. economy

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
6%	Better than 2007	9%	5%	4%
11%	Same as in 2007	10%	11%	13%
83%	Worse than 2007	81%	84%	83%

The U.S. real estate market

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
4%	Better than 2007	4%	5%	2%
7%	Same as in 2007	8%	7%	6%
89%	Worse than 2007	88%	88%	92 %

15. Compared to 2008, please indicate what you anticipate in 2009:

Your company's overall financial performance

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
27%	Better than 2008	26%	27%	27%
34%	Same as in 2008	31%	34%	37%
40%	Worse than 2008	43%	39%	36%

The U.S. economy

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
10%	Better than 2008	7%	13%	8%
25%	Same as in 2008	27%	28%	18%
65%	Worse than 2008	66%	58%	73%

The U.S. real estate market

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
12%	Better than 2008	10%	13%	12%
29%	Same as in 2008	28%	34%	24%
59%	Worse than 2008	61%	53%	64%

C. POLICY ADMINISTRATION

16. Does your company have a formal relocation policy?

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
81%	% of companies answering "Yes"	64%	88%	98%

17a. Is your company...

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
22%	Regional	40%	15%	4%
26%	National	31%	26%	19%
53%	International	30%	59%	77%

17b. Do you ever relocate employees between countries?

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
58%	% of companies answering "Yes"	34%	60%	82%

18. How many salaried (non-hourly) people are employed by your company?

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
100%		39%	35%	26%

19. Who selects the household goods carrier for your employee's relocation?

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
47%	The company	37%	50%	55%
19%	The company & employee together	33%	14%	6%
9%	The employee	19%	4%	2%
22%	A relocation firm	10%	30%	30%
3%	Other	2%	2%	6%

19a. Which department(s) at your company select the household goods carrier for your employee's relocation?

Of those where company is involved in selection: (see Question 19)		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
88%	Human resources	83%	78%	29%
28%	Relocation	6%	27%	67%
12%	Executive management	26%	5%	1%
11%	Procurement	8%	11%	22%
3%	Other	3%	1%	4%

20a. Does your company have a centralized relocation department?

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
72%	% of companies indicating "Yes"	52%	82%	94%

20b. Does your company's centralized relocation department…*

Of those with a centralized relocation department: (see Question 20a)		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
85%	Develop relocation policy	80%	83%	91%
81%	Manage domestic relocation programs	74%	74%	95%
68%	Control household goods carrier selection	69%	60%	71%
61%	Control additional relocation services provider(s) selection	57%	57%	71%
50%	Manage international relocation programs	34%	44%	71%
30%	Handle air travel via commercial airlines	38%	29%	24%
30%	Control freight carrier selection	37%	26%	28%
27%	Handle office relocations	40%	25%	19%
22%	Control air carrier selection	26%	16%	27%

*includes those who don't know

21a. Does your company have different tiers (or levels) within its relocation policy?

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
38%	No tiers or levels	52%	19%	14%
3%	One tier	3%	4%	2%
22%	Two tiers	24%	19%	22%
28%	Three tiers	15%	43%	27%
7%	Four tiers	2%	8%	14%
9%	Five tiers or more	4%	7%	20%
3.0	Average Number of Tiers (of companies with tiers/levels)	2.6	2.9	3.3

21b. What are your different tiers (or levels) based on?

Of those with tiers/levels: (see Question 21a)		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
66%	Job or Grade Level (i.e. staff, management, professional, etc.)	76%	63%	63%
46%	Position/Job Title	50%	49%	37%
35%	New Hire/Current Employee Status	33%	33%	38%
31%	Homeowner/Renter Status	15%	32%	45%
11%	Salary	17%	10%	8%
7%	Other	5%	8%	7%

22. In 2008, what approximate percentage of your company's relocating employees were:

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
50%	Transferees	40%	50%	64%
50%	New Hires	60%	50%	36%
64%	Homeowners	67%	66%	57%
35%	Renters	33%	33%	43%

23. How long does an employee have to…

a) *Accept a relocation offer**

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
23%	1 week or less	27%	17%	24%
41%	Up to 2 weeks	35%	46%	46%
9%	Up to 3 weeks	8%	10%	3%
19%	Up to 1 month	24%	16%	14%
3%	Up to 2 months	1%	3%	7%
2%	Up to 3 months	2%	8%	7%
4%	More than 3 months	3%	8%	0%

*excludes those who don't know

b) *Report to work at the new location**

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
5%	1 week or less	8%	5%	5%
13%	Up to 2 weeks	15%	10%	12%
6%	Up to 3 weeks	4%	6%	11%
43%	Up to 1 month	41%	49%	37%
15%	Up to 2 months	17%	14%	16%
13%	Up to 3 months	15%	11%	14%
4%	More than 3 months	4%	4%	5%

*excludes those who don't know

24. Which of the following services did your company outsource to a relocation service, HRO or brokerage firm in 2008?

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
39%	Did not use a relocation service, HRO or brokerage firm in 2008	62%	31%	16%
45%	Real estate sales/marketing	23%	56%	67%
38%	Real estate purchase	17%	45%	60%
37%	Contract of household goods carrier	22%	40%	42%
34%	Monitoring of shipment	18%	44%	43%
32%	Arrangement of family's transportation and accommodations	18%	44%	37%
32%	Counseling about the planning & details of relocation	16%	37%	47%
30%	Expense tracking/reimbursement services	14%	37%	46%
29%	Orientation tours at new location	8%	39%	46%
28%	Counseling about company policy	9%	33%	49%
28%	Tax gross-up assistance	10%	36%	42%
26%	Assistance with employee claims preparation and submission	13%	34%	36%
25%	Audit and/or payment of invoice	9%	31%	41%
19%	Supplementary services (appliances cleaning, etc.)	9%	25%	25%
2%	Other	0%	2%	4%

24a. Which department(s) at your company select a relocation service, HRO or brokerage firm?

Of those where company outsources: (see Question 24)		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
73%	Human resources	87%	83%	53%
34%	Relocation	13%	23%	69%
20%	Executive management	19%	22%	21%
22%	Procurement	4%	10%	46%
4%	Other	2%	5%	4%

25. How many expense-paid house-hunting TRIPS does your company allot for a SPOUSE/PARTNER to the new location?*

Of total sample: (Average Shown)	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
1.6	1.6	1.6	1.5

*includes those who don't know

26. How many expense-paid DAYS are EMPLOYEES allowed for house-hunting trips?*

Of total sample: (Average Shown)	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
4.9	4.2	5.1	5.8

*includes those who don't know

27. How was the Internet used for relocation-related matters in 2008?

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
13%	Did not use the Internet for relocation-related matters in 2008	22%	9%	7%
80%	Communicate via e-mail with relocating employees	72%	84%	87%
51%	Research relocation-related matters (policy, benchmarking, etc.)	40%	50%	69%
46%	Complete online forms for employee relocation	38%	50%	64%
44%	Initiate/execute employee relocation services	26%	47%	69%
37%	Access relocation company website for reporting or other services	17%	40%	61%
26%	Research relocation service providers	25%	27%	27%
22%	Audit/verify prices quoted for relocation services	19%	20%	27%
2%	Other	1%	2%	2%

D. RELOCATION COSTS

28. To what extent does your company reimburse relocation expenses of:

Transferees

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
63%	Full reimbursement of relocation expenses	62%	60%	71%
46%	Lump sum payment	38%	49%	49%
40%	Partial reimbursement based on salary, position, policy tier, etc.	30%	44%	39%
5%	No reimbursement of relocation expenses	6%	5%	5%

New Hires

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
51%	Full reimbursement of relocation expenses	53%	44%	59%
46%	Lump sum payment	38%	47%	51%
49%	Partial reimbursement based on salary, position, policy tier, etc.	48%	53%	46%
9%	No reimbursement of relocation expenses	10%	8%	10%

29. Are carrier transportation expenses paid directly by the company or paid by the employee and then reimbursed?

Transferees

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
87%	Paid directly by the company	76%	91%	95%
13%	Paid by the employee then reimbursed as outlined above	19%	15%	12%
0%	Paid by the employee and not reimbursed	8%	5%	5%

New Hires

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
83%	Paid directly by the company	71%	87%	95%
24%	Paid by the employee then reimbursed as outlined above	36%	19%	12%
8%	Paid by the employee and not reimbursed	13%	6%	4%

30. For relocating employees (transferees OR new hires), does your company reimburse/pay to...

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
10%	Company does not pay for any of these items	20%	5%	2%
79%	Pack all items	69%	85%	87%
72%	Move an automobile	57%	80%	84%
56%	Move exercise equipment	49%	58%	64%
51%	Unpack all items	42%	58%	53%
48%	Move a second automobile	29%	50%	66%
45%	Move recreation and lawn equipment	45%	44%	46%
41%	Carry items down from the attic	34%	44%	46%
38%	Move unlimited weight	28%	33%	58%
36%	Have permanent/extended storage of some possessions	32%	37%	41%
36%	Move collections of highly valuable objects like statuary, paintings, antiques	34%	36%	37%
32%	Move pets	26%	35%	37%
16%	Move satellite TV dishes	13%	20%	13%
16%	Move a boat	14%	16%	18%
16%	Have belongings picked up from a secondary residence (summer home, relative's home, etc.)	18%	13%	18%

31. When a relocating employee (transferee OR new hire) is a homeowner who will be BUYING (not renting), does your company...

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
13%	Company does not offer any of these benefits	25%	6%	5%
76%	Offer temporary housing allowance	60%	82%	83%
68%	Offer home-finding trips	49%	75%	86%
59%	Offer storage	43%	65%	75%
55%	Reimburse/pay for home sale costs	31%	65%	77%
54%	Reimburse/pay for home purchase costs	27%	63%	81%
45%	Offer home marketing assistance	19%	53%	73%
36%	Offer qualified home sale program	6%	41%	75%
36%	Reimburse/pay for federal tax liability	20%	37%	54%
31%	Offer duplicate housing assistance	10%	36%	59%
27%	Reimburse/pay for loss-on-sale	12%	27%	49%
26%	Offer bonuses/incentives for employee-generated home-sale	8%	27%	51%
23%	Offer mortgage subsidy or allowance	14%	19%	40%

32. When a relocating employee (transferee OR new hire) will be RENTING (not buying), does your company. . .

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
11%	Company does not offer any of these benefits	22%	4%	4%
67%	Offer temporary housing allowance	58%	70%	81%
61%	Offer home-finding trips	40%	70%	81%
60%	Reimburse/pay for lease cancellation	34%	76%	78%
51%	Offer storage	37%	55%	66%
36%	Reimburse/pay apartment search or finder's fees	15%	43%	58%
28%	Apply temporary living allowance toward rent	22%	35%	28%
20%	Reimburse/pay for hook-up fees	12%	27%	23%
20%	Reimburse/pay for security deposits	18%	26%	16%

E. EMPLOYEE, SPOUSAL & ASSISTANCE ISSUES

33. What is the age range of your most frequently relocated salaried employee?*

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
7%	Less than 30 years	8%	8%	2%
29%	30-35 years	26%	34%	29%
28%	36-40 years	32%	35%	43%
18%	41-45 years	21%	17%	14%
18%	More than 45 years	12%	6%	12%

*include those who don't know

34. In 2008, what approximate percentage of your relocations involved:*

Of total sample: (Average Shown)		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
20%	Female employees	19%	19%	24%
45%	Wife/female partner (trailing spouse)	41%	46%	51%
28%	Husband/male partner (trailing spouse)	21%	16%	24%
47%	Employees with children	39%	51%	55%

*include those who don't know

35. What assistance does your company provide to the relocating employee for elder care?

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
79%	No elder care assistance	84%	81%	70%
13%	Provide list of nursing homes and/or day-care centers	9%	11%	20%
10%	Allow transferee to use pre-tax dollars for outside care	8%	8%	16%
6%	Relocate an elderly relative that does not live with the employee currently, but will either live with the employee at the new location or at a nearby residence/facility	3%	7%	7%
3%	Other	1%	4%	7%

36. Does your company allow the hiring of spouses of employees?*

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
11%	Yes, without restriction	16%	11%	3%
4%	Yes, but not at the same location	5%	2%	5%
69%	Yes, but not in the same department/division	60%	71%	79%
17%	No	19%	16%	13%

*include those who don't know

37. How frequently is an employee's relocation affected by the employment status of that employee's spouse/partner?

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
5%	Almost always	10%	2%	2%
37%	Frequently	38%	42%	29%
48%	Seldom	39%	46%	64%
10%	Never	13%	11%	5%

38a. Does your company assist an employee's spouse or partner in finding employment in the new location?

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
50%	% of companies indicating "Yes"	48%	44%	61%

38b. How does your company assist an employee's spouse or partner in finding employment in the new location?

Of those who did not indicate "No assistance" to Question 38a		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
61%	Provide networking assistance	83%	57%	39%
40%	Provide resume preparation assistance	29%	49%	45%
32%	Pay for outplacement/career services from an outside firm	14%	37%	49%
23%	Provide interviewing skills training	16%	20%	37%
21%	Find employment within company	31%	16%	16%
13%	Find employment outside company	19%	12%	8%
8%	Other	2%	8%	14%

38c. What approximate percentage of relocated employees with a spouse or partner used this employment assistance?*

Of those who did not indicate "No assistance" to Question 38a		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
24%	Average Percent	31%	23%	16%

*include those who don't know

F. TRANSPORTATION

39. With how many carriers does your company have contractual agreements for the transportation of household goods?

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
62%	% of companies with contracts	43%	71%	88%
2.1	Average number of carriers (of those with contract)	1.9	2.0	2.6

40. Of the household goods carriers under contract, does your company specify which carriers are preferred?

Of those with contracts (see Question 39)		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
68%	% of companies answering "Yes"	75%	68%	62%

41. How important are the following attributes when SELECTING a household goods carrier?*

Importance rated of each attribute on a scale of 1 to 10, where:
1 means "Not Important"
4 means "Somewhat Important"
6 means "Very Important"
8 means "Extremely Important"
10 means "Critically Important"
Respondents could use any number between these points.

Table below: Those who rated the attribute a 9 or 10 or "Critically Important."

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
88%	Service (i.e. overall capabilities, capacity)	79%	88%	83%
82%	Quality (i.e. on-time delivery, performance history)	75%	89%	83%
68%	Price	69%	70%	55%
61%	Reputation	53%	66%	67%
51%	Claims processing	46%	52%	57%
34%	Local agent(s)	25%	38%	41%
23%	Technology	16%	29%	25%

*includes those who don't know

42. How important are the following attributes when EVALUATING a household goods carrier?*

Importance rated of each attribute on a scale of 1 to 10, where:
1 means "Not Important"
4 means "Somewhat Important"
6 means "Very Important"
8 means "Extremely Important"
10 means "Critically Important"
Respondents could use any number between these points.

Table below: Those who rated the attribute a 9 or 10 or "Critically Important."

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
88%	Quality (i.e. on-time delivery, performance history)	78%	92%	86%
82%	Service (i.e. overall capabilities, capacity)	75%	89%	86%
68%	Employee feedback	58%	76%	70%
66%	Price	58%	72%	57%
52%	Claims processing	44%	58%	56%
23%	Online customer tools	15%	28%	26%

*includes those who don't know

43. What percent of the time do you receive complaints from your relocated employees about the following aspects of a household goods carrier's service?*

Salesperson/Customer Service

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
48%	0%	65%	38%	36%
36%	1-9%	20%	48%	47%
10%	10-19%	10%	10%	11%
4%	20-29%	4%	2%	5%
1%	30-39%	0%	1%	1%
0%	40-49%	0%	0%	0%
1%	50% or more	0%	2%	0%

Packing/Origin Agent

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
38%	0%	53%	29%	16%
48%	1-9%	20%	44%	56%
14%	10-19%	10%	20%	14%
8%	20-29%	7%	6%	11%
1%	30-39%	0%	1%	1%
0%	40-49%	1%	0%	0%
2%	50% or more	4%	1%	1%

Driver/Timeliness

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
36%	0%	52%	29%	19%
37%	1-9%	22%	48%	45%
13%	10-19%	12%	13%	14%
9%	20-29%	11%	5%	14%
1%	30-39%	0%	1%	3%
2%	40-49%	2%	3%	3%
2%	50% or more	2%	1%	3%

Unpacking/Destination Agent

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
40%	0%	56%	25%	20%
36%	1-9%	20%	45%	51%
12%	10-19%	13%	12%	14%
7%	20-29%	6%	8%	6%
1%	30-39%	1%	0%	1%
1%	40-49%	0%	0%	4%
3%	50% or more	4%	1%	3%

Damages/Claims Administration

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
25%	0%	42%	18%	7%
42%	1-9%	21%	54%	58%
17%	10-19%	16%	17%	19%
10%	20-29%	14%	6%	10%
2%	30-39%	1%	2%	4%
1%	40-49%	2%	0%	1%
3%	50% or more	4%	2%	3%

*includes those who don't know

G. INTERNATIONAL

44a. Compared to 2007, did the number of employees your company relocated internationally during 2008...

Of those who answered "Yes" to Question 17b		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
28%	Increase	21%	22%	37%
56%	Stay About the Same	62%	59%	49%
17%	Decrease	17%	19%	15%

44b. Compared to 2008, do you anticipate that the number of employees your company will relocate internationally during 2009 will...

Of those who answered "Yes" to Question 17b		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
15%	Increase	14%	9%	22%
46%	Stay About the Same	38%	57%	38%
39%	Decrease	48%	36%	40%

44c. What is the typical international relocation assignment duration for employees at your company?

Of those who answered "Yes" to Question 17b:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
3%	Less than 3 months	7%	1%	3%
10%	4 to 12 months	14%	10%	6%
54%	Greater than 12 months, but less than 3 years	31%	60%	62%
33%	3 years or more	48%	28%	29%

44d. In 2008, what approximate percentage of your international relocations were: Short-term/temporary assignments (less than 12 months)?*

Of those who answered "Yes" to Question 17b:	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
14% Average Percent	10%	15%	17%

*includes those who don't know

44e. Compared to 2008, do you expect the number of international short-term/temporary assignments (less than 12 months) in 2009 to...

Of those who answered "Yes" to Question 17b:	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
13% Increase	5%	12%	19%
63% Stay About the Same	64%	57%	69%
24% Decrease	31%	31%	12%

44f. Comparing your international relocation policy to your domestic relocation policy, does your company's international relocation policy offer...

Of those who answered "Yes" to Question 17b:	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
17% No difference between international and domestic relocation policies	26%	18%	10%
62% Additional tax considerations	38%	63%	75%
58% Additional leave time that includes at least one visit back to the employee's home country	38%	61%	68%
54% Intercultural and language training	36%	49%	69%
49% Allowances for children to attend certain schools	21%	51%	63%
46% Increased allowances for permanent storage	19%	51%	59%
46% Higher rental housing allowance	24%	49%	57%
45% Higher relocation allowances	38%	54%	41%
31% Additional leave time	29%	37%	25%
25% Extended per diem charges	24%	28%	22%
5% Other	5%	3%	6%

44g. Which of the following international services did your company outsource to a relocation service, HRO or brokerage firm in 2008?

Of those who answered "Yes" to Question 17b:	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
26% Did not use a relocation service, HRO or brokerage firm for international relocation services in 2008	48%	24%	16%
47% Contract of household goods carrier for international shipping	24%	53%	54%
46% Monitoring of international shipment	24%	50%	56%
44% Visa & immigration services	38%	44%	47%
43% Destination services/orientation tours in host country	10%	46%	60%
41% Securing rental property in host country	14%	40%	59%
39% Arrangement of family's temporary accommodations	24%	46%	41%
39% Intercultural and language training	17%	38%	53%
36% Counseling about company policy concerning international relocation	14%	40%	46%
35% Counseling about the planning and details of relocating internationally	10%	43%	44%
35% Arrangement of family's international transportation	17%	41%	41%
32% Repatriation services	17%	32%	41%
31% Management of international relocation program	19%	31%	38%
25% International real estate (sales/marketing and/or purchase)	7%	29%	32%
5% Other	7%	4%	4%

44h. How important are the following attributes when SELECTING a household goods carrier for international relocations?*

Importance rated of each attribute on a scale of 1 to 10, where:
1 means "Not Important"
4 means "Somewhat Important"
6 means "Very Important"
8 means "Extremely Important"
10 means "Critically Important"
Respondents could use any number between these points

Table below: Those who rated the attribute a 9 or 10 or "Critically Important."

Of those who answered "Yes" to Question 17b:	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
86% Quality (i.e. on-time delivery, performance history)	77%	88%	88%
82% Service (i.e. overall capabilities, capacity)	72%	86%	84%
65% Price	61%	66%	67%
60% Reputation	47%	63%	66%
58% Scheduling	44%	66%	57%
47% Third Party	23%	54%	53%
37% Technology	25%	47%	40%

*includes those who don't know

44i. How does your company assist an internationally relocated employee's spouse or partner in finding employment in the new location?

Of those who answered "Yes" to Question 17b:	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
56% No assistance	55%	62%	50%
22% Provide networking assistance	38%	22%	13%
20% Pay for outplacement/career services from an outside firm	19%	19%	21%
20% Pay for work visa in new location	17%	21%	21%
15% Provide resume preparation assistance	10%	18%	16%
12% Provide interviewing skills training	12%	9%	15%
11% Find employment within company	14%	7%	12%
6% Find employment outside company	10%	1%	4%
4% Other	0%	3%	9%

44j. In 2008, what reasons were cited for an employee declining an international relocation or for an international relocation to fail?

Of those who answered "Yes" to Question 17b:	Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
43% No international relocations declined or failed	67%	44%	26%
33% Family issues/ties	17%	31%	46%
22% Personal reason (non-disclosed)	14%	19%	29%
21% Lack of adaptability by the spouse/partner	10%	19%	31%
17% Financial issues/concerns	7%	22%	18%
12% Lack of adaptability by employee	2%	12%	18%
5% Lack of spousal/partner assistance	2%	6%	6%
4% War/terrorism	2%	4%	4%
4% Illness	5%	6%	3%
13% Don't know	5%	12%	19%
1% Other	0%	1%	0%

H. CORPORATE/RESPONDENT PROFILE

45. Which one of the following most accurately describes your company's business classification?

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
33%	Manufacturing/Processing	31%	32%	40%
32%	Service (Profit) (includes educational services, healthcare, high-tech, etc.)	40%	27%	27%
13%	Wholesale/Retail	8%	14%	18%
10%	Financial (includes banking, insurance, investments, etc.)	9%	12%	18%
4%	Service (Non-profit) (includes religious institutions, charities, etc.)	7%	4%	1%
3%	Government/Military	2%	3%	2%
5%	Other	2%	9%	2%

46. What were your company's annual sales for 2008?

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
10%	Less than $25 million	29%	11%	5%
7%	$26 - $50 million	13%	6%	0%
9%	$51 - $99 million	18%	7%	2%
12%	$100 - $249 million	21%	5%	7%
9%	$250 - $499 million	7%	13%	5%
8%	$500 - $749 million	5%	12%	7%
11%	$750 million - $1 billion	5%	18%	11%
39%	Over $1 billion	0%	28%	63%

47. What is your gender?

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
60%	Female	54%	62%	67%
40%	Male	46%	38%	33%

48. What is your department's function?

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
68%	Human Resources/Personnel	79%	65%	45%
18%	Relocation Services	2%	15%	45%
7%	Compensation and Benefits	1%	13%	8%
5%	Administration	10%	3%	1%
2%	Finance/Accounting	3%	3%	0%
0%	Shared Services/Procurement/Purchasing	0%	0%	1%
2%	Other	5%	1%	0%

49. What is your position within the company?

Of total sample		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
2%	President	4%	0%	0%
10%	Vice President	29%	17%	7%
21%	Director	20%	19%	14%
28%	Manager	18%	25%	46%
2%	Supervisor	2%	1%	2%
11%	Relocation Administrator	1%	19%	17%
2%	HR Assistant	2%	2%	1%
3%	Recruiter	4%	3%	0%
4%	Coordinator	5%	4%	4%
10%	Other	8%	12%	8%

50. Which of the following trade publication(s) do you regularly read?

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
10%	None	10%	11%	10%
63%	HR Magazine	77%	66%	41%
51%	Human Resource Executive	58%	48%	29%
32%	Employee Benefits News	42%	30%	18%
29%	Mobility	5%	30%	63%
29%	Workforce	36%	27%	22%
28%	HR News	34%	27%	22%
14%	Human Resources Outsourcing (HRO) Today	16%	12%	13%
9%	Runzheimer Reports on Relocation	3%	5%	22%
7%	The Relocation Report	4%	6%	12%
6%	National Relocation and Real Estate	4%	6%	11%
5%	Other	7%	4%	4%

51. Which of the online/e-mail trade publication(s), connected with the following websites or organizations below, do you regularly read?

Of total sample.		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
19%	None	16%	17%	12%
58%	shrm.org	69%	55%	46%
37%	HR.com	48%	34%	25%
28%	erc.org	6%	29%	60%
27%	workforce.com	30%	28%	23%
9%	hrhero.com	15%	6%	4%
5%	Other	5%	5%	5%

52. To what relocation-related association(s) do you currently belong?

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
43%	None	55%	42%	28%
38%	Society of Human Resource Management (SHRM)	41%	38%	27%
27%	Worldwide ERC (formerly Employee Relocation Council - ERC)	2%	27%	61%
15%	Regional or local relocation council	5%	15%	31%
2%	Canadian Employee Relocation Council (CERC - Canada)	0%	3%	4%
6%	Other	6%	6%	5%

53. What relocation-related association conferences do you typically attend?

Of total sample:		Less than 500 Salaried Employees	500–4,999 Salaried Employees	5,000+ Salaried Employees
57%	None	70%	56%	37%
17%	Local ERC Conference	3%	17%	36%
16%	Regional SHRM Conference	19%	18%	8%
15%	SHRM Conference and Exposition	17%	13%	13%
14%	Worldwide ERC National Relocation Conference	2%	12%	36%
12%	Worldwide ERC Global Workforce Symposium	2%	10%	29%
7%	Other	4%	7%	11%

For further details and survey results from prior years
– including charts and graphs for every question –
please visit **www.atlasworldgroup.com/survey**, or contact:

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ATDA EXHIBIT 13

Agreement between

DULUTH, MISSABE & IRON RANGE RAILWAY COMPANY (DMIR)
CANADIAN NATIONAL RAILWAY COMPANY (CN)
WISCONSIN CENTRAL TRANSPORTATION CORPORATION ("WCTC")

and their employees represented by

AMERICAN TRAIN DISPATCHERS ASSOCIATION (ATDA)

WHEREAS, the Surface Transportation Board, in a Decision dated September 5, 2001 (STB Finance Docket No. 34000), and April 9, 2004, (Finance Docket No, 34424), approved the acquisition by Canadian National Railway Company ("CN") of the Wisconsin Central Transportation Corporation ("WCTC") and Duluth, Missabe and Iron Range Railway Company ("DMIR") respectively, subject to the conditions for the protection of railroad employees described in New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), and

WHEREAS, on June 7, 2004 the DMIR, WCTC, and CN served notice under Article I, Section 4 of the Protective Conditions of its intent to change operations as a result of the above transaction, and

WHEREAS, the parties to this agreement agree that this Implementing Agreement, made by and between the DMIR, WCTC, CN and the American Train Dispatchers Association ("ATDA") on behalf of employees represented by the ATDA, establishes procedures for the transfer of work and employees whose positions will be abolished on the DMIR.

IT IS AGREED:

1. CN will provide a minimum of twenty (20) days notice at Keenan for six (6) management dispatcher positions at Stevens Point and three (3) separation allowances of ninety thousand

dollars ($90,000), subject to applicable payroll deductions. Upon the transfer of the DM&IR dispatching territory to Stevens Point to the newly established management dispatcher positions, the DM&IR dispatching position losing the territory will be abolished. Should CN not transfer all of the territory being dispatched in Keenan, or abolish all train dispatcher positions (Chief, Assistant Chief and/or Trick) at Keenan, any remaining dispatcher on the DMIR shall remain covered by the ATDA agreement with representation rights unaffected by this implementing agreement.

2. A successful applicant for a separation allowance may choose one of the following options:

   (a) Accept a lump sum separation allowance of $90,000, less applicable withholding taxes. The separation allowance will be paid on the employee's last paycheck, at which time the employee's position will be abolished and the employee's employment relationship with the company will terminate.

   (b) Accept a dismissal allowance to be paid over a period of time, designated by the employee, not to exceed thirty-six (36) months. The gross amount of the dismissal allowance will be $90,000 less $1,000 per month for each month of the dismissal allowance. The dismissal allowance will be paid in equal increments on the first pay period of each of the months for the duration of the dismissal allowance, at which time the employee's position will be abolished and the employee's employment relationship with the company will terminate. Employees receiving a dismissal allowance in accordance with this paragraph will be entitled to Health & Welfare benefits in accordance with the DMIR/ATDA Agreement. Employees receiving a

dismissal allowance in accordance with this paragraph will not be entitled to any other benefits of the DMIR/ATDA Agreement.

(c) Any separation allowances will be paid within 1 month following the employee's last day of work.

3. DMIR Dispatchers must submit their application for the above options or state their intent to exercise any DMIR seniority that they may have, in writing, to the individual designated by the carrier, with copy to General Chairman, within ten (10) days from date of posting. Employee elections identified on their application will be considered irrevocable. Failure to submit an application, or identify sufficient options, will result in the employee being considered as having elected to exercise any existing DMIR seniority.

4. Assignments of positions and awarding of separations allowances shall be made in seniority order. In the event insufficient individuals elect to bid on positions at Stevens Point, the positions will be filled by force assignment of DMIR dispatchers in reverse seniority order, except for those individuals who are to receive a separation or dismissal allowance. Individuals, other than those receiving the separation allowances, who refuse such assignment will not be entitled to the benefits of this agreement.

5. The employee protective benefits and conditions as set forth in the New York Dock conditions, attached hereto as Attachment "A," shall be applicable to this transaction. There shall be no duplication of benefits by an employee under this agreement and any other agreement or protective arrangement. Active and regularly assigned employees at Keenan failing to apply for a position pursuant to this agreement shall not be considered deprived of

employment and shall not be entitled to the protective benefits contained in the New York Dock conditions or any other protective agreement.

6. Any employee determined to be a "displaced" or "dismissed" employee as a result of this transaction, who is otherwise eligible for protective benefits and conditions under some other job security agreement, conditions or arrangements shall elect in writing within sixty (60) days of being affected between the protective benefits and conditions of this agreement and the protective benefits and conditions under such other arrangement by giving written notification to the carrier's designated individual, with copy of such election to the employee's General Chairman. Should any employee fail to make an election of benefits during the period set forth in this paragraph, such employee shall be considered as electing the protective benefits and conditions of this agreement.

7. Each "dismissed employee" shall provide the carrier's designated individual the following information for the preceding month in which such employee is entitled to benefits no later than the tenth (10th) day of each subsequent month on a standard form provided by the carrier

   a. The day(s) claimed by such employee under any unemployment insurance act.

   b. The day(s) claimed by such employee worked in other employment, the name(s) and address(es) of the employer(s) and the gross earnings made by the dismissed employee in such other employment.

   c. The day(s) for which the employee was not available for service due to illness, injury or other reasons for which the employee could not perform service and the employee received sickness benefits.

8. If the "dismissed employee" referred to herein has nothing to report account not being entitled to benefits under any unemployment insurance law, having no earnings from any other employment, and was available for work the entire month, such employee shall submit, on a form provided by the carrier, within the time period provided for in Paragraph 7, the form annotated "Nothing to Report."

9. The failure of any employee to provide the information as required in paragraphs 7 and 8 shall result in the withholding of all protective benefits during the month covered by such information pending receipt by the carrier of such information from the employee. No claim for protective benefits shall be honored beyond sixty (60) days from the time specified in paragraph 7, except in circumstances beyond the individual's control.

10. The carrier will make payment of the protective benefits within thirty (30) days of receipt and verification of the information required in paragraphs 7 and 8.

11. Employees transferred from Keenan to Stevens Point under provisions of this agreement may at their option and in lieu of any and all benefits provided by Sections 9 and 12 of the New York Dock conditions (Attachment "A"), be afforded a special payment as provided in Attachment "B", if eligible, or accept the company's management relocation package.

12. Employees transferring from Keenan to Stevens Point pursuant to this agreement shall forfeit all DMIR seniority, become WCTC management employees, and be credited with prior DMIR service on the WCTC for vacation purposes.

13. In accordance with the organization's request a copy of this Implementing Agreement with attachments will be provided to all the Dispatchers at Keenan.

14. This agreement shall constitute the required agreement, as stipulated in Article I, Section 4 of the protective conditions, for the transfer of work as indicated in the notice of June 7, 2004.

15. Any dispute arising out of this Implementing Agreement and the Attachments will be handled by the appropriate General Chairman with the officer designated to receive such claims and grievances for the carrier. All unresolved disputes will be disposed of in accordance with the applicable provisions of New York Dock.

16. The provisions of this Implementing Agreement have been designed to address a particular situation. Therefore, the provisions of this Implementing Agreement and the Attachments are without precedent or prejudice to the position of either party and shall not be referred to in any other case.

17. This Agreement shall be effective this 6th day of May, 2005.

Signed this 6th day of May, 2005 at Homewood, Illinois.

For
DULUTH, MISSABE & IRON RANGE RAILWAY COMPANY (DMIR)
CANADIAN NATIONAL RAILWAY COMPANY (CN)

For

AMERICAN TRAIN DISPATCHERS ASSOCIATION (ATDA)

David W. Volz

ATTACHMENT A

NEW YORK DOCK CONDITIONS

Labor protective conditions to be imposed in railroad transactions pursuant to 49 U.S.C. 11343 et seq. (formerly sections 5(2) and 5(3) of the Interstate Commerce Act), except for trackage rights and lease proposals which are being considered elsewhere, are as follows:

ARTICLE I

1. Definitions. – (a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May 1936.

2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collecting bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

3. Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both this Appendix and some other job

security or other protective conditions or arrangements, he shall elect between the benefits under this Appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits; and, provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

4. Notice and Agreement or Decision – (a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(b) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

5. Displacement allowances – (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

6. Dismissal allowances. – (a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earning of such employee in employment other than with the railroad, and the benefits received.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place or residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement.

7. Separation allowance. - A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump sum payment computed in accordance with section 9 of the Washington Job Protection Agreement of May 1936.

8. Fringe benefits. - No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the railroad in active service or on furlough as the case may be, to the extent that such benefits can

be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

9. Moving expenses. - Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representative; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed with three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provision of this section unless such claim is presented to railroad within 90 days after the date on which the expenses where incurred.

10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.

11. Arbitration of disputes. – (a) In the event the railroad and its employees or their authorized representative cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix except section 4 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding, upon the parties.

(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will be entitled to appoint additional representatives so as to equal the number of labor organization representatives.

(c) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

12. Losses from home removal. – (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the transaction and is therefore required to move his place of residence;

(i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

(b) Changes in place of residence which are not the result of a transaction shall not be considered to be within the purview of this section.

(c) No claim for loss shall be paid under the provisions of this section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or their representatives and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner. One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

ARTICLE II

1. Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, be grated priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on the railroad which he is, or by training or re-training physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

2. In the event such training or re-training is requested by such employee, the railroad shall provide for such training or re-training at no cost to the employee.

3. If such a terminated or furloughed employee who had made a request under section 1 or 2 of the article II fails without good cause within 10 calendar days to accept an offer of a position comparable to that which he held when terminated or furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

ARTICLE III

Subject to this appendix, as if employees of railroad, shall be employees, if affected by a transaction, of separately incorporated terminal companies which are owned (in whole or in part) or used by railroad and employees of any other enterprise within the definition of common carrier by railroad in section 1(3) of part I of the Interstate Commerce Act, as amended, in which railroad has an interest, to which railroad provides facilities, or with which railroad contracts for use of facilities, or the facilities of which railroad otherwise uses; except that the provisions of this appendix shall be suspended with respect to each such employee until and unless he applies for employment with each owning carrier and each using carrier; provided that said carriers shall establish one convenient central location for each terminal or other enterprise for receipt of one such application which will be effective as to all said carriers and railroad shall notify such employees of this requirement and of the location for receipt of the application. Such employees shall not be entitled to any of the benefits of this appendix in the case of failure, without good cause, to accept comparable employment, which does not require a change in place of residence, under the same conditions as apply to other employees under this appendix, with any carrier for which application for employment has been made in accordance with this section.

ARTICLE IV

Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between the railroad and an employee not represented by a labor organization with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within 30 days after the dispute arises, either party may refer the dispute to arbitration.

ARTICLE V

1. It is the intent of this appendix to provide employee protections which are not less than the benefits established under 49 USC 11347 before February 5, 1976, and under section 565 of title 45. In so doing, changes in wording and organization from arrangements earlier developed under those sections have been necessary to make such benefits applicable to transactions as defined in article 1 of this appendix. In making such changes, it is not the intent of this appendix to diminish such benefits. Thus, the terms of this appendix are to be resolved in favor of this intent to provide employee protections and benefits no less than those established under 49 USC 11347 before February 5, 1976 and under section 565 of title 45.

2. In the event any provision of this appendix is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this appendix shall not be affected.

ATTACHMENT B

In lieu of the benefits provided for in Sections 9 and 12 of the New York Dock conditions, employees who accept positions at Stevens Point may elect, at the time of their transfer, to accept the following payments subject to taxation:

All DMIR Employees who transfer to Stevens Point:

After fifteen (15) working days	$2,000
After sixty (60) working days	$1,000
After six (6) months	$2,000
After one (1) year	$1,000
After fifteen (15) months	$2,000

To qualify for the above payments, an employee must be in active service at Stevens Point at the time such payment is due.

DMIR Employees who relocate their primary residence:

DMIR employees who relocate their primary residence and select the benefits of this Attachment at the time of their transfer will be entitled to an additional $10,000 upon proof of sale, at fair market value, of their primary residence in the Keenan area, and proof of purchase of a new primary residence within a reasonable distance of Stevens Point. To qualify for the benefits of this paragraph, relocation of primary residence, including both sale and purchase, must occur within two (2) years of the date of transfer.

May 6, 2005

Side Letter No. 1

Mr. Craig A. McNeil
General Chairman
American Train Dispatchers Association
2023 Allegheny Street
Duluth, MN 55811-3207

Dear Mr. McNeil:

This will confirm our understanding reached during negotiations leading to the Implementing Agreement of this date in connection with the transfer of train dispatching work of the Duluth, Missabe and Iron Range (DMIR) to Stevens Point, Wisconsin.

It was agreed that DMIR employees, who do not choose the CN Management Relocation package, may elect to receive a one-time lump sum payment of one thousand dollars ($1,000) to offset the costs associated with a familiarization/house hunting trip to the Stevens Point area. Employees electing the lump sum payment who do not relocate will have the one thousand dollars ($1,000) deducted from any future earnings or protective payments.

Yours truly,

C.K. Cortez
Manager – Labor Relations

May 6, 2005

Side Letter No. 2

Mr. Craig A. McNeil
General Chairman
American Train Dispatchers Association
2023 Allegheny Street
Duluth, MN 55811-3207

Dear Mr. McNeil:

This will confirm our understanding reached during negotiations leading to the Implementing Agreement of this date in connection with the transfer of train dispatching work of the Duluth, Missabe and Iron Range (DMIR) to Stevens Point, Wisconsin.

During our negotiations, we agreed that representatives of the company will meet with representatives of the union, within sixty (60) days of the effective of the agreement in an effort to resolve which employees, if any, are considered "dismissed" or "displaced" in accordance with the provisions of the New York Dock protective conditions.

The representatives will also establish a procedure to resolve any differences resulting from the Implementing Agreement.

Yours truly,

C.K. Cortez
Manager – Labor Relations

May 6, 2005

Side Letter No. 3

Mr. Craig A. McNeil
General Chairman
American Train Dispatchers Association
2023 Allegheny Street
Duluth, MN 55811-3207

Dear Mr. McNeil:

This will confirm our understanding reached during negotiations leading to the Implementing Agreement of this date in connection with the transfer of train dispatching work of the Duluth, Missabe and Iron Range (DMIR) to Stevens Point, Wisconsin.

During our negotiations, we agreed that any DMIR employees who transfer and become Wisconsin Central employees, as a result of the Implementing Agreement of this date, will be paid for any unused Personal Leave Days for the calendar year at the time of transfer.

Yours truly,

C.K. Cortez
Manager – Labor Relations

May 6, 2005

Side Letter No. 4

Mr. Craig A. McNeil
General Chairman
American Train Dispatchers Association
2023 Allegheny Street
Duluth, MN 55811-3207

Dear Mr. McNeil:

This will confirm our understanding reached during negotiations leading to the Implementing Agreement of this date in connection with the transfer of train dispatching work of the Duluth, Missabe and Iron Range (DMIR) to Stevens Point, Wisconsin.

During our negotiations, we agreed that it may be possible that DMIR employees who transfer and become a Wisconsin Central employee, as a result of the Implementing Agreement of this date, may be entitled to the benefits of the New York Dock protective conditions.

Yours truly,

C.K. Cortez
Manager – Labor Relations

May 6, 2005

Side Letter No. 5

Mr. Craig A. McNeil
General Chairman
American Train Dispatchers Association
2023 Allegheny Street
Duluth, MN 55811-3207

Dear Mr. McNeil:

This will confirm our understanding reached during negotiations leading to the Implementing Agreement of this date in connection with the transfer of train dispatching work of the Duluth, Missabe and Iron Range (DMIR) to Stevens Point, Wisconsin.

During our negotiations, we agreed that any DMIR employees who transfer and become a Wisconsin Central employee, as a result of the Implementing Agreement of this date, will be allowed to elect to receive payment of accumulated sick days at the time of transfer or retirement. Such election must be made in writing to the designated carrier official with a copy to the General Chairman.

Yours truly,

C.K. Cortez
Manager – Labor Relations

May 6, 2005

Side Letter No. 6

Mr. Craig A. McNeil
General Chairman
American Train Dispatchers Association
2023 Allegheny Street
Duluth, MN 55811-3207

Dear Mr. McNeil:

This will confirm our understanding reached during negotiations leading to the Implementing Agreement of this date in connection with the transfer of train dispatching work of the Duluth, Missabe and Iron Range (DMIR) to Stevens Point, Wisconsin.

During our negotiations, you asked what adverse affect, if any, an employee who had a pre-existing condition would suffer if they came into the WCTC Management Health & Welfare Plan. This is to advise that the WCTC Management Health & Welfare Plan has 1st day coverage without exclusion.

Yours truly,

C.K. Cortez
Manager – Labor Relations

ATDA EXHIBIT 14

ARBITRATION PURSUANT TO ARTICLE I, SECTION 4 OF THE NEW YORK DOCK CONDITIONS

In the matter of ICC Finance Docket No. 32549, Decision No. 38, between **Burlington Northern Santa Fe Railway Company** -and- **Brotherhood of Maintenance of Way Employes**	**DECISION**

Before
Joseph A. Sickles, Arbitrator
March 25, 1999

APPEARANCES:

For the Railway Company: Wendell Bell
General Director, Labor Relations

For the Brotherhood: Donald F. Griffin
Assistant General Counsel

BACKGROUND INFORMATION

The Interstate Commerce Commission (ICC), the predecessor agency of the Surface Transportation Board (STB), approved a merger and consolidation of the Burlington Northern Railroad Co. (BN) and the Atchison, Topeka and Santa Fe Railway Co. (SF) on August 16, 1995 (ICC Finance Docket No. 32549, Decision No. 38). The ICC imposed the *New York Dock* labor protective conditions for affected employees. The merged railway company (BNSF or the Carrier) thereafter began consolidating the operations of the two railroads. Clerical forces, mechanical forces, common yards, common road operations, yardmasters, and dispatchers were consolidated.

However, the maintenance of way operations of the BN and the SF had remained essentially separate, except for a November 1996 agreement integrating the regional and system gang operations.

On April 7, 1998, the Carrier notified the Brotherhood of Maintenance of Way Employes (BMWE), the bargaining representative of the maintenance of way employees for both the BN and the SF, of its plans to consolidate and integrate the seniority districts from the two lines. BNSF wanted to consolidate the existing 47 seniority districts over 34,000 miles of merged track into nine districts. The notice was served under the procedures of both Article I, Section 4, of *New York Dock* and Article XII of the Imposed Agreement of Presidential Emergency Board (PEB) No. 219.[1]

The parties agreed in June 1998 that the main part of the proposed consolidation would proceed under Article XII,[2] and the consolidations at nine common points would proceed under the *New York Dock* mechanism.

In August 1998, the parties concurred on the rearrangement of seniority districts in the Houston area. However, they were unable to conclude agreements at the other eight common-point locations:

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[1]*New York Dock* provides procedures (notification, negotiation, and binding arbitration if necessary) for protecting the interests of all employees affected by a government-approved merger or consolidation. PEB 219 provides comparable procedures for realigning seniority districts of maintenance of way and signal employees.

[2]Arbitrator Richard Mittenthal was appointed to conduct the Article XII proceedings, and he issued his award on March 11, 1999.

Amarillo, Chicago, Enid, Fort Worth, Galesburg, Kansas City, Oklahoma City, and Wichita. On August 4, 1998, the Carrier invoked the arbitration procedures of *New York Dock* to resolve their differences and achieve an implementing agreement for consolidation at the common points of the maintenance of way seniority districts of the BN and SF.[3] This decision covers only the consolidations at the eight common points still in dispute.

By letter of August 28, 1998, the parties selected the undersigned as a neutral referee. The parties exchanged prehearing submissions or briefs on October 27, 1998. A hearing was held on November 4 and 5, 1998, at the offices of the National Mediation Board in Washington, DC. On January 15, 1999, the BMWE submitted a posthearing document consisting of proposed rules of the STB and the Federal Railroad Administration and the BMWE's arguments concerning the applicability of those proposed rules to this case. The BNSF replied to the posthearing submission on January 21, 1999, and included a January 14, 1999, arbitration decision and implementing agreement involving the BMWE (and other unions) and three other railroads.

ISSUE

> What are the appropriate terms for implementing agreements to consolidate BMWE seniority districts at the identified common points as a result of the ICC-approved merger of the BN and the SF?

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[3]The parties continued to negotiate while the arbitration procedure was being implemented, but they had not settled all of their differences beyond the Houston location.

POSITIONS OF THE PARTIES

With the exception of the Chicago terminal (which will be discussed in detail below), the BMWE does not dispute the Carrier's authority to consolidate the seniority districts at the points that are common to the BN and SF territories by establishing seniority zones that encompass parts of the seniority districts from both railroads. The parties have exchanged proposals and counter-proposals on the details of the consolidations. The BMWE proposals, in general, are more modest in scope than the BNSF's proposals. BMWE states that its proposals "are more appropriate for the limited consolidation of forces required by the Carrier to conduct operations within those common points" and less disruptive to the affected employees.

The proposals of the parties basically differ on the following points:

- The geographic boundaries of the consolidated seniority zones
- Who can bid on jobs in the consolidated zones
- Where the extra gangs (or mobile crews) may work in the zones
- Employees excluded from consolidation
- Which collective bargaining agreement(s) will apply
- The propriety of consolidating seniority districts at the Chicago terminal

In its merger application to the ICC, the Carrier indicated it would eliminate roughly 22 maintenance of way positions at these

common points. Those specific reductions do not appear to be an issue in this proceeding. Both parties agree that the *New York Dock* conditions will apply to all employees displaced or dismissed as a result of the consolidation.

Geographic Boundaries

Amarillo. The consolidated zone would include portions of BN Seniority District #26 and SF Central Region Seniority District #1, Zone 2. Both parties propose including the BN Seniority District from MP 328 to MP 340.1. Both would include the SF Seniority District from MP 3.5 to the north to MP 538.5 to the east. BNSF would extend the southern border to MP 572.0 on the SF line; the BMWE would end the zone at MP 558.0. BNSF asserts that its proposal for the southern border is the existing section limit for the crews that work out of the Santa Fe Amarillo Yard. BMWE argues that there is no operational justification for including this extra SF trackage, which is North Texas prairie and has no significant yards. BMWE claims this trackage is better maintained by SF divisional crews.

Enid. The parties agree on the boundaries of this zone: SF yard and track between MP 554 and MP 533 would be transferred to BN Seniority District #65.

Fort Worth. The consolidated zone would include portions of BN Seniority District #26 and SF Southern Region Seniority District #1, Zone 2. The parties agree that the district would extend from

Fort Worth north to MP 371 and south to MP 342.2 (on the SF territory), and west to MP 11 (on the BN territory). While the BMWE would not include any BN track east of Fort Worth, BNSF would include the BN track east to MP 643.9. The Carrier claims that this east track would still have to be serviced by Fort Worth-based personnel, because they are the nearest, or a new section crew would have to be created to service it, which would be inefficient. BMWE asserts that the disputed trackage, used by the former BN under a trackage rights arrangement, is owned by D/FW RAILTRAN, an administrative agency established by Fort Worth and Dallas to manage commuter rail service. RAILTRAN intends to expand passenger service and increase speed on those tracks, according to BMWE; and including employees who work on freight trackage into a freight/passenger mix creates potential safety concerns.

Galesburg. The parties agree that the consolidated zone will encompass MP 174 to MP 185 on the SF Eastern Region Seniority District #1 and the BN Seniority District #3 from the current northern, eastern, and southern boundaries to MP 171.

Kansas City. The consolidated zone would include portions of Seniority District #62 from the Frisco territory (a railroad previously merged with the BN), BN Seniority District #4, and SF Eastern Region Seniority District #2, Zones 1 and 4. Under both proposals, the northwest boundary would be MP 7.9 on the BN territory; the northeast limit would be MP 216.1 on the BN territory; and the eastern boundary would be MP 444.3 on the SF territory. The Frisco track and SF track run roughly parallel

south from Kansas City. Under BNSF's proposal, the Kansas City zone would include the Frisco track to MP 22 and the SF track to MP 27. The BMWE zone would be much smaller, including the Frisco track only to MP 2 and the SF track only to MP 8. The Carrier plans to build a new crossover at Olathe, where the Frisco and SF tracks practically meet at MP 22 (Frisco) and MP 27 (SF), so it wants to include this territory in the consolidated terminal zone. Moreover, according to BNSF, Olathe is included in the existing section limits of the former Frisco and SF. The BMWE maintains that its proposed consolidated zone includes all of the major and smaller yards identified by the Carrier in its ICC merger application.

Oklahoma City. The parties have no dispute on the boundaries of this consolidated zone: MP 535.8 to MP 554 from Frisco Seniority District #64, and MP 377 to MP 391 from SF Southern Region Seniority District #1, Zone 1.

Wichita.[4] The consolidated zone would transfer the Frisco Yard at Wichita and certain trackage to the SF Eastern Region Seniority District #2, Zone 2. Both proposals would limit the zone at MP 483.5 on the east. While the BMWE would end the zone on the west at the Wichita terminal (MP 501.1), the Carrier would extend the zone to MP 515.2, to include Valley Center. The Carrier argues

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[4]BMWE indicates that there is no dispute on the boundaries at Wichita (p. 28 of its submission). However, BMWE's proposal of August 4, 1998 (BMWE Exhibit 7) differs from the BNSF proposal of September 10, 1998 (BMWE Exhibit 10), and the Carrier's brief describes differences in the proposals.

that Valley Center is an industrial area; and although Valley Center is currently out of service, it is possible that some work would have to be performed there.

Bidding Rights and Authorized Work Areas for Headquartered Employees

Under both proposals, headquartered or fixed-point employees could work anywhere in their assigned zone, although BMWE adds that employees could only be *assigned* to positions from their respective seniority district rosters. Similarly, headquartered forces could work outside of the zone in their respective seniority districts, if permitted by their collective bargaining agreements. The BNSF and BMWE proposals differ on how vacancies would be bulletined or posted in the consolidated seniority districts.

In Amarillo, Fort Worth, and Oklahoma City, both proposals provide that the number of BN and SF employees already headquartered in the newly defined zone would be determined as of April 1, 1998. The BMWE proposal states that the ratio of BN and SF employees thus calculated would be maintained: Subsequent vacancies would be bulletined only to the appropriate seniority district roster; and if there were no bidders or furloughed employees available from that roster, the Carrier would have to hire new employees. The BNSF proposal states that the parties would mutually agree on the appropriate ratio of BN and SF headquartered employees (presumably, this would be the ratio calculated as of April 1, 1998), and prior bidding rights would be

granted for future vacancies. In other words, if vacancies occurred on the former SF territory in a consolidated zone, SF employees would have priority bidding rights; but if insufficient SF employees bid or were on furlough, other employees in the zone would be eligible for the positions and consolidated seniority throughout the zone would govern in filling the vacancies.

In Kansas City, three seniority districts are involved: BN, SF, and Frisco. The proposals for consolidation would work the same way as for Amarillo, Fort Worth, and Oklahoma City, but based on the relative percentages of the three different employee groups.

In Enid and Wichita, the consolidation would work somewhat differently. In Enid, both parties agree that the SF employees would be transferred to the applicable BN Seniority District; in Wichita, the former Frisco employees (BN employees working under the Frisco collective bargaining agreement) would be transferred to the applicable SF Seniority District. At both locations, employees thus transferred would have two options: (1) to dovetail their seniority into the new district, or (2) to decline the transfer and bump into a position in their old seniority district (presumably outside the consolidated zone). An employee bumped by option (2) would then have an option to (A) transfer to a position in the consolidated zone, or (B) exercise bumping rights within his own territory. Employees transferring to a new seniority district would get credit for their consolidated seniority (for their service on both territories) for vacation, leave, entry rates, and other seniority-based benefits. Moreover, an employee electing to

move to the new territory and accept dovetailed seniority (option 1) would have the right to return to his original seniority district at any time for two years. The only difference between the Carrier and the BMWE proposals for Enid and Wichita is that the BMWE proposes that options must be exercised within the time allotted to exercise seniority rights under their collective bargaining agreements, while the Carrier proposes a one-time, 60-day option. The BMWE asserts that the Carrier's proposal is potentially more disruptive because an affected SF employee in Enid, for example, might initially stay on the SF line, starting a chain of bumps, and then 60 days later elect to move to the BN, initiating another series of employee moves.

In Galesburg, the parties have agreed that BN and SF forces may work on the other's territory in the zone. However, BMWE would limit the time employees could work on the other territory to two days in any 30-day period, because BMWE believes that the Carrier's proposal could result in the replacement of all SF forces with BN employees. BNSF would not put a time limit on the cross-territory work.

Extra Gangs

As a general proposition, BNSF would allow all forces assigned to a zone—including mobile crews—to work anywhere within the zone. In addition, all forces—including mobile crews—would be permitted to work outside the zone in their seniority districts, if permitted

by the applicable collective bargaining agreement. Positions on the extra gangs that are expected to work exclusively within the zone would be allocated to the seniority rosters based on the "applicable percentage."[5] Vacancies would then be bulletined, with prior bidding rights granted to maintain the ratio. However, in the absence of bidders with prior rights, the jobs may be assigned from other forces within the zone. (The Carrier does not address extra gangs that are not expected to work exclusively within the zone.)

By contrast, the BMWE would allow extra gangs assigned to the zone to work anywhere within the zone but not outside the zone. Extra gangs from outside the consolidated zone would be permitted to work inside the zone only in their respective seniority districts and only if permitted by their collective bargaining agreements. BMWE would require that vacancies on the extra gangs be bulletined in all seniority districts in the zone, but assignments would have to maintain the set ratio of BN and SF (and, where appropriate, Frisco) headquartered employees determined on April 1, 1998. The Carrier would have to hire new employees for the gangs if there were insufficient bidders or furloughed employees from the appropriate seniority roster.

In Amarillo, the BMWE would not require that the extra gangs maintain the set ratio of BN and SF employees. Rather, extra gangs

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[5] "Applicable percentage" is not defined in the Carrier's proposals. BMWE understands that percentage to be the relative numbers of all positions in the consolidated zone on April 1, 1998.

would be bulletined in both seniority districts and assignments would be made on the basis of relative seniority in the applicable classification. However, the BMWE would limit the work of mobile crews on the other railroad's territory within the zone to five days within a 30-day period.

In Galesburg, the BMWE-proposed two-day limit in a 30-day period for working on the other railroad's territory presumably would apply to extra gangs assigned there.

Exclusions

BMWE would exclude Track Inspectors and Bridge and Building (B&B) employees from the consolidation agreements at Amarillo, Fort Worth, Kansas City, and Oklahoma City. (At Kansas City, Bridgetenders and Water Service employees also would be excluded.) B&B employees would be permitted to perform emergency work on the other railroad's property within the zone for no more than two days' duration. The BMWE explains that Track Inspectors already have assigned territories and are governed by federal regulations; and B&B forces in each area are already apportioned in a manner sufficient to carry out the day-to-day work.

The Carrier would not exclude any employees from the consolidation agreements.

Applicable Collective Bargaining Agreement

In its proposed shell agreement of June 29, 1998 (BMWE Exhibit

#6), the Carrier said that for each consolidated district, one collective bargaining agreement (CBA)—the dominant one in each of the nine zones—would apply.[6] Under the Carrier's proposal, the controlling CBA at the following five locations would be

Amarillo:	Santa Fe
Fort Worth:	Santa Fe
Galesburg:	Burlington Northern
Kansas City:	Santa Fe
Oklahoma City:	Frisco

At Enid, presumably the BN CBA would apply, as the parties have agreed that the SF yard and track would transfer to BN Seniority District #65. At Wichita, presumably the SF CBA would apply, as the parties have agreed to consolidate the Frisco yard and tracks into the SF Eastern Region Seniority District #2, Zone 2.

Under the BMWE proposal, headquartered employees would continue to work under their respective CBAs. The extra gangs assigned exclusively within the zone would be governed by the SF CBA at Amarillo, Fort Worth, Kansas City, and Oklahoma City. Extra gangs that work both inside and outside the zone would be governed by their existing CBAs.

The BMWE is especially concerned with the effect of assigning a single CBA to the headquartered forces in Oklahoma City and Enid. SF employees are covered by a 401(k) plan with a matching contribution from the company. Under the BNSF proposal, SF

[6]The Carrier's final proposals in August and September 1998 were silent on the issue of the controlling CBA. I assume that BNSF maintains its position that one CBA should govern each zone.

Oklahoma City forces would work under the Frisco CBA,[7] and SF forces at Enid that elected to dovetail their seniority in order to hold their current jobs would work under the BN CBA. The BMWE asserts that a 401(k) plan is a retirement program, which is absolutely protected by *New York Dock*. BMWE urges the arbitrator to expressly provide that SF employees would retain all rights under their 401(k) plan, regardless of which CBA applies.

Chicago

The Carrier is proposing a consolidation of portions of the BN and SF seniority districts at the Chicago terminal. The BNSF proposal would combine MP 0.86 to MP 40.2 from BN Seniority District #1 and MP 3 to MP 10 from SF Eastern Region District #1. The proposal follows the Carrier's usual provisions:

- Based on the ratio of BN and SF employees in the consolidated zone as of April 1, 1998, seniority rosters would have prior bidding rights on vacancies.
- Extra gang positions would be assigned by prior rights.
- All forces in the zone—both headquartered and mobile—may work anywhere in the zone. They may also work outside of the zone on their respective seniority districts if permitted by their CBAs.
- The BN CBA would apply in the zone.

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[7]The BMWE notes that the Carrier apparently has withdrawn its proposal that the SF CBA would apply in Oklahoma City. However, the record contains no evidence that the proposal was withdrawn, and BMWE saw fit to raise the issue in its brief.

BMWE objects to this proposed consolidation at the Chicago terminal. By letter of October 8, 1998, BMWE told BNSF that "the Carrier's proposal needlessly compromises the safety of our members working in the Chicago area." The BMWE argues that the arbitrator is precluded from implementing the Carrier's proposal on safety grounds.

The BN trackage is 40 miles long and involves both freight and high-speed passenger service on quadruple and triple track, 60 high-speed crossovers, and 15 curves. As many as 180 trains operate on this track daily. The SF track proposed for consolidation is seven miles long, a straight-forward double track, and involves only freight movement. BMWE argues that using SF employees on the BN trackage at the Chicago terminal under working conditions they are unfamiliar with would put the employees at extreme risk.

BMWE contends that the perils inherent in this proposed consolidation mean that the consolidation is not an "approved" transaction. BMWE cites a 1992 arbitration award (under Article XII of the Imposed Agreement) by John Fletcher involving the Chicago and North Western Transportation Company (CNW) and the BMWE. In that case, the CNW had argued *for* separating commuter and freight lines into separate territories, and Fletcher agreed, stating,

> Safety of employees and the public is a significant factor which cannot and had ought not be attempted to be quantified monetarily. Setting off the freight territories from the suburban commuter territories, where different

> skills and experience are necessary, and where continuity of the work force is of substantial benefit, is an operational need of sizable magnitude.

BMWE also sites a provision of section 10101(11) of the Staggers Rail Act of 1980 (the Rail Transportation Policy): "It is the policy of the United States Government . . . to encourage fair wages and safe and suitable working conditions in the railroad industry." Consequently, the BMWE argues, the STB may not approve an unsafe transaction, and the arbitrator in a *New York Dock* proceeding is a delegate of the STB. Moreover, section 11326(a) of the Interstate Commerce Commission Termination Act[8] demands that employees affected by an approved merger "will not be in a worse position related to their employment" as a result of the transaction.

A *New York Dock* arbitrator is "without authority to impose safety conditions as part of any implementing agreement," according to the BMWE. Therefore, the BMWE maintains, the Carrier's proposed consolidation at the Chicago terminal is not an "approved" transaction because of the inherent safety problems; the arbitrator cannot remedy the safety problems; and, therefore, the arbitrator may not fashion an implementing agreement for the Chicago terminal.

The Carrier disputes that its proposed consolidation creates a safety problem. According to the Carrier, the same skills and abilities are required to maintain freight track and passenger

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[8]The successor provision to section 11347 of the Interstate Commerce Act.

track. Compliance with work rules will assure the safety of personnel. To the extent experience contributes to safety, the Carrier points out that its proposal would give prior bidding rights to experienced BN forces for assignments on the BN track; and SF employees who might be assigned there would bring more relevant experience to the job than the new hires that would result if consolidation were denied.

Proposed FRA and STB Rules

On December 24, 1998, the Federal Railroad Administration (FRA) and STB served a notice of proposed rulemaking for the development and implementation of safety integrated plans (SIPs) by railroads proposing to merge, consolidate, or acquire other railroads. The proposed rules would require carriers to submit a written SIP to both the FRA and the STB before a merger or acquisition transaction could be approved. In the introduction to the proposed rules, the FRA and STB note two recent safety concerns that prompted the SIP proposal: (1) the consolidation of seniority districts following the merger of the Union Pacific and Southern Pacific railroads, resulting in the retirement of experienced personnel and the use of forces who lacked training on the new territory's operating rules; and (2) equipment failures and lack of coordination in dispatching systems following the BN-SF merger.

The BMWE submitted a copy of these proposed federal regulations to support its contention that the arbitrator has jurisdiction to consider the safety implications of the Carrier's

proposed Chicago consolidation. The BMWE maintains that this joint FRA/STB document supports the following two conclusions:

- The STB must consider railroad safety in all matters before it, and a *New York Dock* arbitrator, acting as an agent of the STB, must consider safety.
- The FRA specifically identified the use of roadway workers in unfamiliar territory as a safety problem.

The Carrier responded by noting that the document serves notice of *proposed* rules, with prospective effect at some future point only. The BNSF also emphasizes that the proposed regulations purport to combine the expertise of the FRA—in all railroad safety matters—and the expertise of the STB—in economic regulation and environmental impacts. Therefore, the Carrier says, the FRA—not the STB—has primary responsibility for railroad safety. The BNSF concludes that the BMWE's argument is a Catch-22: It urges that a *New York Dock* arbitrator must consider safety and, at the same time, is precluded from imposing safety conditions in an implementing agreement.

DISCUSSION

During World War I, the railroads in this country were nationalized. After the war, the Transportation Act of 1920 returned the railroads to private ownership, and the federal government adopted a policy of encouraging consolidations and mergers of the railroads. As a matter of policy, the ICC in 1938

began requiring certain protections for railroad employees who were affected by the consolidations and mergers. The Transportation Act of 1940 reiterated the federal policy of encouraging voluntary mergers and consolidations of railroads, provided such transactions served the public interest, and legally mandated labor protective conditions that the ICC had been imposing as policy.

Over the next 40 years, the types and levels of labor protections the ICC ordered when approving transactions evolved. In 1979, the ICC issued a set of labor protective conditions in its *New York Dock* decision. This set of conditions became the standard for the minimum protections that would be required. The *New York Dock* conditions imposed both financial benefits and procedural requirements to protect affected employees.

Article I, section 2 of the *New York Dock* conditions spawned a lot of litigation. That section provides

> The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

This section seemed to contradict the provisions of Article I, section 4 of *New York Dock*, which clearly contemplated that changes would occur, required the railroad to notify employees and their representatives in advance of an anticipated transaction, mandated that the railroad and employees negotiate those changes, and

required arbitration if the parties failed to reach agreement on those changes. In fact, arbitrators had been imposing changes such as transfers of employees and work and minor modifications of rules and working conditions regularly over the past 40 years.

To resolve this apparent contradiction, the ICC explained in its *Carmen I* decision[9] (1988) that a carrier is permitted to override CBA provisions that would impede the full implementation of an ICC-approved transaction, upon compliance with the imposed labor protections. In *Carmen II* (1990), the ICC further explained that CBAs should be preserved, but that limited modifications to CBAs could be made if necessary to complete an approved merger or consolidation. *Carmen II* said that the bargaining rights of employees must be balanced by the business needs of railroads. In *Carmen III* (1998), the STB clarified once again the authority and limitations of a *New York Dock* arbitrator to modify CBA provisions.

Carmen III specified the following limitations on arbitrators' authority to modify CBAs:

Approved transaction. There must be an approved transaction. If the principal transaction (generally a consolidation or acquisition of control) is approved directly by the ICC or STB, the subsequent transactions that occur as a direct result (e.g.,

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[9]The series of *Carmen* decisions are ICC and STB decisions resulting from *the CSX Corp.—Control—Chessie and Seaboard Coast Line Industries, Inc.* consolidation and the subsequent appeals for review of arbitral decisions involving the Brotherhood of Railway Carmen.

consolidation of facilities and transfer of work assignments) and that are necessary to fulfill the purpose of the principal transaction are also approved.

Necessity. Arbitrators may override CBA provisions only when necessary—not merely convenient—to effect an approved transaction and realize a transportation benefit such as enhanced efficiency or greater safety. "Arbitrators should not require the carrier to bear a heavy burden" to justify operational changes to enhance efficiency, but arbitrators also should not assume that all labor arrangements should be modified.

Rights, privileges, and benefits. Benefits such as group life insurance, hospitalization and medical care, free transportation, sick leave, disability and retirement programs, workers' compensation, and unemployment compensation may not be altered by arbitrators. These are the "rights, privileges, and benefits" referred to in Article I, section 2 of *the New York Dock* conditions, and they are protected absolutely. Other employee interests (e.g., scope rules, seniority provisions, union representation arrangements, rates of pay, work rules, and working conditions) may be altered by an arbitrator if a two-part test of necessity is met:

1. Is there a nexus between the changes sought and an approved transaction?

2. Is modification of the CBA necessary to achieve a transportation benefit to the public from the transaction?

If the answer to both question is yes, modifications to the CBA involving *other than section-2-protected benefits* are deemed necessary and permitted.

Approved Transaction

The merger of the BN and the SF was approved by the ICC in 1995. The consolidations of seniority districts at the eight common points clearly flow as a direct result of the approved principal transaction. With the exception of Chicago, the parties agree that these consolidations are also approved transactions.

The BMWE maintains that the proposed transaction at Chicago is not an "approved" transaction because it compromises the safety of its members. The proposed FRA-STB rules, which would require that a railroad adopt a safety integrated plan (SIP) before a merger application could be approved, supports its contention, the BMWE claims.

The SIP proposal is just that—a proposal. If and when adopted, it will have prospective effect only. While these proposed rules demonstrate the government's concern with railroad safety, they have no timely applicability to the issues before me. Moreover, the proposal places responsibility for considering safety issues on the federal government, and most especially the FRA. There is no suggestion that a *New York Dock* arbitrator has the expertise to decide safety issues. The BMWE even asserts that a *New York Dock* arbitrator is precluded from imposing safety

conditions.

According to *Carmen III*, the only criteria for finding that a subsequent transaction is approved is that it occurs as a direct result of an approved principal transaction and it is necessary to fulfill the purpose of the principal transaction. Those criteria are met in the proposed Chicago consolidation, as they are at the other seven common points.[10]

Necessity

Whether the proposed CBA modifications are necessary to effect the approved transactions will be addressed individually for each of the common points.

Rights, Privileges, and Benefits

The SF employees are covered by a 401(k) plan, which is a retirement income program. The BMWE correctly points out that the 401(k) plan is a benefit that is absolutely protected by Article I, section 2 of the *New York Dock* conditions. As a result, the SF employees will maintain all rights to their 401(k) plan, whatever other CBA modifications may be made, unless and until the parties agree to change the plan through RLA section 6 bargaining.

The other changes sought by the Carrier represent CBA

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[10]I note, for the record, that I am not persuaded that the proposed Chicago transaction is unsafe. The Carrier correctly points out that occasionally using SF employees on the unfamiliar BN tracks would present a smaller safety risk than hiring inexperienced, new employees to work the BN track.

modifications that may be changed by an arbitrator if they meet the two-part test of necessity.

Individual Proposals

Geographic Boundaries

In every case where the parties have not agreed on the boundaries of the consolidated seniority zones, the BNSF proposal is for a larger territory than the BMWE proposal. The reason for consolidating seniority districts is to promote efficiency and productivity, which is one of the underlying purposes of the federal policy advocating railroad mergers. It follows logically that a larger zone that consolidates two (or more) groups of employees working separately but in reasonably close proximity would be more efficient than a smaller one, absent some extraordinary factors. As a general rule, the larger consolidated zone will achieve a greater public transportation benefit by allowing the Carrier to operate even more efficiently.

Amarillo. The BMWE has presented no argument to contradict the assumption that the larger zone would be more efficient. Therefore, the parties shall adopt the Carrier's proposed zone.

Chicago. The BMWE has offered no counterproposal to the BNSF's proposed consolidation, relying solely on its argument that any consolidation in Chicago should not be condoned. Since I have dismissed the BMWE's objection to the Chicago consolidation, the Carrier's proposed boundaries shall be adopted by the parties.

Enid. The parties have agreed to transfer the SF yard and track between MP 554 and MP 533 to the BN Seniority District #65. It is so ordered.

Fort Worth. The BMWE asserts that including the BN track east of Forth Worth to MP 643.9 presents safety issues because of the presence of passenger trains. I am not persuaded by this assertion, for the same reasons discussed above relative to the Chicago consolidation. Therefore, the parties shall adopt the Carrier's proposed zone.

Galesburg. The parties have agreed that the consolidated zone will encompass MP 174 to MP 185 from the SF district, and the BN Seniority District #3 from the current northern, eastern, and southern boundaries to MP 171. It is so ordered.

Kansas City. The disputed area is the parallel Frisco and SF tracks south of Kansas City. The Carrier presents a logical reason for its proposal: the inclusion of a new crossover at Olathe that it plans to build that will allow trains to bypass the Argentine Yard if desired. The BMWE says only that its smaller proposed zone includes all of the yards identified by the Carrier in its merger application. On its face, the Carrier's proposal makes more sense and should provide the greater transportation benefit. Therefore, the parties shall adopt the Carrier's proposed zone.

Oklahoma City. The parties have agreed on the boundaries of this consolidated zone: MP 535.8 to MP 554 from the Frisco track and MP 377 to MP 391 from the SF track. It is so ordered.

Wichita. The Carrier's proposal would include Valley Center at MP 515.2 on the Frisco line. The BMWE has offered no specific objection to this proposal, so I must assume that the Carrier's proposal will be efficient and should be adopted. Therefore, the parties shall adopt the Carrier's proposed zone.

Bidding Rights

Both parties begin by determining the percentage of existing headquartered positions for each CBA seniority roster as of April 1, 1998, in each consolidated zone where applicable.[11] From that point, the proposals diverge. The BMWE would maintain the ratios indefinitely: Subsequent vacancies would have to be filled from the appropriate rosters in the appropriate percentages (and new employees hired if there are insufficient bidders). The BNSF would grant prior bidding rights based on the calculated ratio; however, if unable to fill positions from the appropriate roster, the Carrier would have the right to assign personnel from the other roster(s).

The Carrier's proposal is significantly more efficient and appropriate. The Carrier should have the flexibility to assign available employees, especially furloughed employees, from the other roster(s). This flexibility should allow the Carrier to

[11]This procedure would not apply in Enid or Wichita, where all employees would transfer to a single seniority district. It is not clear if it would apply in Galesburg, where the parties have simply agreed that BN and SF forces could work on each other's territories.

maintain its operations more efficiently, and potentially could save the Carrier the cost of benefits for furloughed employees. By granting prior bidding rights, the Carrier's proposal prevents displacement of incumbent employees and minimizes the impact on CBA provisions. Therefore, the parties shall adopt the Carrier's proposal granting prior bidding rights in Amarillo, Chicago, Fort Worth, Kansas City, Oklahoma City, and, if appropriate, Galesburg.

Bumping Rights

In Enid and Wichita, all positions in the consolidated zone would transfer to a single seniority district. The parties have agreed conceptually to a process allowing employees to choose to (1) accept the transfer (and dovetail their seniority in the new seniority roster), or (2) remain in their current seniority district by exercising seniority rights and bumping into another position in their seniority district that is outside the consolidated zone. The Carrier would give affected employees a one-time option and 60 days in which to exercise that option. The BMWE would invoke the existing CBA provisions to limit the time employees would have to make the choice.

The Carrier has presented no persuasive argument for disturbing the existing CBA time limits in this matter. If the current contracts would potentially allow multiple choices by each affected employee, however, the resulting chaos would hamper

efficient operations.[11] Therefore, the implementing agreements at these two locations shall provide a one-time right for employees directly affected by the consolidation to bump back into their former seniority district, and they shall have the time period specified in their current CBA to make that choice. Likewise, any employee bumped as a result of an employee returning to his former seniority district shall have a one-time right to transfer to the consolidated zone or exercise his bumping rights, subject to the time limits in his CBA.

Authorized Work Areas for Headquartered Employees

In general, both parties agree that headquartered employees could work anywhere in their assigned zone, and they could also work on their respective seniority districts outside the zone if permitted by their CBAs. However, in Galesburg, the BMWE would limit the amount of time an SF employee could "cross over" to work on the BN territory or a BN employee could "cross over" to work on the SF territory to two days in any 30-day period. The BMWE would further require that the section gangs assigned to the territory be working at the same time that the crossover work is authorized.

The BMWE explains that the reason for the time limit in Galesburg is its fear that the BNSF could manipulate the assignments to replace all SF forces with BN employees because the

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[11]The CBAs involved are not included in the record, so I do not know the time limits involved or if they would permit employees to make multiple choices regarding bumping.

SF operations in the area are considerably less than the BN.

Inherent in any consolidation is the possibility—perhaps even likelihood—that some employees will be dismissed as operations are made more efficient. If the Carrier finds it can maintain the limited SF tracks in the zone with its existing BN employees in the zone, that would further the purposes of consolidation and the gain of a public transportation benefit. And the employees dismissed as a result of that consolidation would be entitled to the *New York Dock* financial benefits. The intention of the labor protective conditions of *New York Dock* and its predecessors is to provide compensation to affected employees, not to guarantee jobs to them.

Therefore, the Carrier's Galesburg proposal with no restrictions on the amount of crossover work shall be adopted.

Extra Gangs

There are two major areas of disagreement between the parties with respect to extra gangs: where they could work and how the positions would be filled.

Under both proposals, extra gangs could work anywhere in their assigned zones. (In Amarillo and Galesburg, discussed below, BMWE would limit the amount of time the extra gangs could work on the other railroad's property.) However, while the BNSF would permit extra gangs to travel outside the zone to work on their seniority district, if allowed by the CBA, the BMWE would prohibit extra gangs from working outside their assigned zone. Once again, the

efficiency inherent in the Carrier's proposal must be encouraged. Moreover, the Carrier's proposal seems to create less disturbance to existing contract provisions. To the extent the employees' CBAs allow work outside of the zone, that must be permitted in the implementing agreements. Likewise, extra gangs assigned outside the zone must be allowed to work on their seniority districts inside the zone, if permitted by their CBAs. The Carrier's proposal on this issue shall be adopted.

In Amarillo and Galesburg, the BMWE's limitations on work by mobile crews on the other railroad's territory within the zone are not justified. As I understand the BMWE's proposal, mobile crews in Amarillo would be restricted to working on the other railroad's territory within the zone to a maximum of five days within a 30-day period; and in Galesburg, all employees—including extra gangs—would be limited to working two days within a 30-day period on the other territory. For the reasons discussed above on the BMWE's proposed restriction on crossover work for headquartered Galesburg employees, the BMWE's proposals in Amarillo and Galesburg must accede to the Carrier's need to promote efficiency and productivity.

As for filling vacant positions on the extra gangs, the parties' proposals mirror their proposals for headquartered forces. They would compute a ratio of employee groups in each zone as of April 1, 1998. The BMWE would require the Carrier to maintain that ratio indefinitely; the BNSF would attempt to maintain that ratio by granting prior bidding rights, but would be able to fill

vacancies from other employee groups when necessary. The Carrier's proposal shall be adopted in Amarillo, Chicago, Galesburg, Fort Worth, Kansas City, and Oklahoma City, for the reasons explained above under general bidding rights.[13]

Exclusions

The BMWE has presented no persuasive arguments for excluding certain employees from the consolidation agreements or for limiting the amount of time B&B forces could perform "emergency work" on another railroad's property within the zone. The BMWE has made assertions that allegedly distinguish Track Inspectors, B&B employees, Bridgetenders, and Water Service employees from other BMWE forces, but the distinctions have no bearing on consolidation. Track Inspectors, for example, would still be governed by the same federal regulations after consolidation. The arguments that favor consolidation for other BMWE personnel apply equally to the groups the BMWE would exclude. The arguments against time limits on crossover work apply equally to B&B forces. Therefore, the BMWE's proposed exclusions shall <u>not</u> be part of the implementing agreements.

Applicable Collective Bargaining Agreement

Under the standards established in *Carmen III*, an arbitrator

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[13]In Enid and Wichita, all employees would transfer to a single seniority district, so the bidding rights of extra gangs assigned to the zone should not be an issue.

may modify CBA provisions only when necessary to achieve a transportation benefit. The Carrier has failed to demonstrate how it is necessary that all headquartered employees in the consolidated zones must work under a single CBA. That proposal falls squarely under the category of "convenient, but not necessary." Therefore, the BMWE's proposal that all headquartered employees in Amarillo, Chicago, Fort Worth, Galesburg, Kansas City, and Oklahoma City would continue to work under their respective CBAs shall be adopted. Employees at Enid shall work under the BN CBA, and employees at Wichita shall work under the SF CBA.

This arrangement has the added advantage of assuring the rights of all SF headquartered employees to continue participation in their 401(k) plan.

As for the extra gangs, the parties apparently agree that a single CBA must apply to the gangs assigned exclusively within each zone. There is agreement that the SF CBA would control in Amarillo, Fort Worth, and Kansas City; it is so ordered. The BMWE Galesburg proposal is silent about the controlling CBA; therefore, if there are any extra gangs in Galesburg, they shall be governed by the BN CBA, as proposed by the Carrier. The BN CBA shall also govern the extra gangs in Chicago. In Oklahoma City, the Frisco CBA shall apply, because (according to the Carrier), that is the dominant CBA in the consolidated zone. Extra gangs at Enid shall work under the BN CBA, and extra gangs at Wichita shall work under the SF CBA.

Note that any SF employees assigned to work on extra gangs

under a CBA other than the SF CBA must, nonetheless, be allowed to continue under the SF 401(k) plan.

There is certain confusion in my records as to possible agreements by the parties concerning MP limitations. Nothing herein should be construed as an attempt to alter any of the agreements previously reached by the parties.

DECISION

> The parties shall adopt implementing agreements at the common points of Amarillo, Chicago, Enid, Fort Worth, Galesburg, Kansas City, Oklahoma City, and Wichita as described above. If the parties have not executed agreements for all locations within 60 days after the effective date of this decision, they may contact this arbitrator, and I will write an implementing agreement for any location for which an agreement has not yet been executed.

Signed this 25th day of March 1999 in Bethesda, Maryland.

Joseph F. Sickles
Arbitrator

ATDA EXHIBIT 15

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville FL 32202

January 9, 1988

File: G-125 Dispatchers

Side Letter No. 3

Mr. Davey A. Black, General Chairman
American Train Dispatchers Assn.
Route 2, Box 98
Unicoi, Tennessee 37692

Mr. W. J. Priest, General Chairman
American Train Dispatchers Association
2025 Barkwood Court
Mobile, Alabama 36609

Mr. D. W. Branham, General Chairman
American Train Dispatchers Association
5943 Lynwood Court
Catlettsburg, Kentucky 41129

Mr. E. D. Rountree, General Chairman
American Train Dispatchers Association
311 Bonaventure Road
Thunderbolt, Georgia, 31404

Gentlemen:

This refers to Memorandum Agreement effective January 9, 1988, providing for the coordination and transfer of Train Dispatcher functions from locations covered by the L&N Agreement, Chessie Agreement, Seaboard Agreement, and Clinchfield Agreement to the newly centralized CSX Transportation Train Dispatching operation in Jacksonville, Florida.

The Carrier will offer separation allowances to regularly assigned Train Dispatchers in seniority order in all effected Train Dispatcher offices. The separation allowance will be a lump sum of $50,000 or one of the deferred payment options set forth in the severance plan previously given you during our recent conference in Jacksonville, Florida. Eligible employees who are 55 years of age, but less than 65, who are not otherwise eligible for coverage under Travelers Policy GA 46000 or under Medicare, will be granted, at Carrier expense, the same schedule of Early Retirement Major Medical Benefits as they would have received under Travelers Policy GA-46000, the same life insurance benefits as provided in Travelers Policy GA-23000. The number of separation allowances will be no more than an amount equal to the net reduction of Train Dispatcher positions contemplated by this Memorandum Agreement.

This understanding is without prejudice to the position of either party and will not be cited as a precident in the future.

It is understood and agreed that separations paid to employees desiring to leave the Company will be paid no later than when the dispatching office closes in the city where the employee is working.

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines are business units of the CSX Transportation Group.

If the foregoing confirms our understanding and agreement to this matter, please indicate in the space provided below.

Very truly yours,

R. P. Byers

R. P. Byers
Director of Labor Relations

Dwayne A Black
General Chairman

W. J. Grist
General Chairman

E. D. Roustree
General Chairman

D. W. Branham
General Chairman

cc: Mr. R. J. Irvin, President
American Train Dispatchers Association
1401 South Harlem Avenue
Berwin, Illinois 60402

Mr. H. E. Mullinax, Vice President
American Train Dispatchers Association
911 Clarendon Avenue
Florence, South Carolina 29501

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Finance Docket No. 33556, Sub No. ~~6~~ 5

CANADIAN NATIONAL RAILWAY, GRAND TRUNK CORPORATION, GRAND TRUNK WESTERN RAILROAD COMPANY INCORPORATED – CONTROL – ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, etc.

ARBITRATION SUBMISSIONS OF RESPONDENT AMERICAN TRAIN DISPATCHERS ASSOCIATION

VOLUME III

(Pages R-401 - R-504)

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Attorney for ATDA

April 14, 2011

ATDA EXHIBIT 16

In the Matter of the Arbitration between: CONSOLIDATED RAIL CORPORATION AND MONONGAHELA RAILWAY COMPANY, Carriers, and UNITED TRANSPORTATION UNION(E), Organization.	Pursuant to Article I, Section 4 of the New York Dock Conditions ICC Finance Docket No. 31875 **OPINION AND AWARD**

Hearing Date: September 24, 1992
Hearing Location: Pittsburgh, Pennsylvania
Date of Award: October 29, 1992

JOHN B. LaROCCO
ARBITRATOR
928 Second Street, Suite 300
Sacramento, California 95814-2278

STIPULATED ISSUES IN DISPUTE

(1) Does the Referee have the authority under New York Dock to determine whether the Conrail or the MGA Schedule Agreement will apply on the consolidated operation.

(2) If the answer to question (1) is yes, subsequent to the consolidation of the Monongahela Railway Company operations into Consolidated Rail Corporation, will the collective bargaining agreements applicable to Locomotive Engineers and Locomotive Firemen formerly employed by Monongahela Railway Company be:

(a) the collective bargaining agreements governing rates of pay and working conditions of Locomotive Engineers and reserve engine service employees on Conrail; or

(b) the collective bargaining agreements applicable to the employees on the Monongahela Railway Company prior to the consolidation?

OPINION

I. INTRODUCTION

On October 10, 1991, the Interstate Commerce Commission (ICC) approved the Consolidated Rail Corporation's application to merge the Monongahela Railway Company (MGA) into the Consolidated Rail Corporation (Conrail).[1] Consolidated Rail Corporation-Merger-Monongahela Railway, I.C.C. Finance Docket No. 31875 (Decision dated October 4, 1991). To compensate and protect employees affected by the merger, the ICC imposed the employee merger protection conditions set forth in New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60, 84-90 (1979); affirmed, New York Dock Railway v. United States, 609 F.2d 83 (2nd Cir. 1979) ("New York Dock Conditions") on the Conrail and the MGA pursuant to the relevant enabling statute. 49 U.S.C. §§ 11343, 11347.

This arbitration is conducted pursuant to Section 4 of the New York Dock Conditions.[2] Pursuant to an agreement memorialized by an August 27, 1992 letter, the Carriers and the Organization appointed the undersigned as Arbitrator in this matter and stipulated to the issues in dispute which appear on the title page of this Opinion.

Both parties filed lengthy prehearing submissions. The Arbitrator entertained oral argument during the September 24, 1992 hearing. At the Arbitrator's request, the parties waived the thirty

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[1] The term "Carriers" in this Opinion refers to the MGA and Conrail.

[2] All sections pertinent to this case appear in Article I of the New York Dock Conditions. Thus, the Arbitrator will only cite the particular section number.

day time limitation, set forth in Section 4(a)(3) of the New York Dock Conditions, for issuing this Award.

II. BACKGROUND AND SUMMARY OF THE FACTS

The MGA, which consists of 162 miles of track in Pennsylvania and West Virginia, was, for many years, jointly owned by Conrail, the Pittsburgh and Lake Erie Railroad (now the Three Rivers Railroad) and, one of the predecessor companies of CSX Transportation, Inc. Ninety-nine percent of MGA's revenue traffic is generated from coal hauling originating at coal fields along MGA's line. In 1990, MGA interchanged eighty-three percent of its coal traffic with Conrail. Besides connecting with Conrail at the north end of West Brownsville, the MGA interchanges with the former Pittsburgh and Lake Erie Railroad at Brownsville Junction and with the CSX at Rivesville, West Virginia.

The MGA is divided into two divisions, west and east. Both divisions meet at Brownsville, Pennsylvania the northernmost point on the MGA. The east division follows the Monongahela River south to Fairview, West Virginia while the west division runs from Brownsville southwesterly through Waynesburg, Pennsylvania to Blacksville, West Virginia.

In 1990, Conrail purchased 100% of the MGA stock and on August 14, 1990, the ICC approved Conrail's application to acquire the MGA. Consolidated Rail Corporation-Control Monongahela Railway Company, ICC Finance Docket No. 31630 (Decided on August 14, 1990) Although the ICC imposed the New York Dock Conditions to protect any employees adversely affected by the acquisition, the Conditions were never

triggered since Conrail did not commence integrating the MGA into Conrail until after the October, 1991 merger.

Pursuant to written notice issued under Section 4 of the New York Dock Conditions, the Carriers notified the Organization, on July 3, 1992, of their intent to consolidate, unify, and coordinate all the facilities and operations of the MGA into the Conrail. The Carrier's notice contemplated that Conrail would completely subsume the MGA, that is, there would no longer be any MGA operations, services, or facilities. In sum, the MGA, as presently constituted, would go out of existence because the entire MGA would accrete into Conrail.

At a meeting held on May 13, 1992, the Carriers presented the Organization with a detailed explanation of the impending consolidation. To fully understand the breadth of the operational changes and the effect of these changes on MGA Engineers, the Arbitrator must initially relate how trains are currently operated over the MGA. Coal producers located along the MGA place car orders with the Conrail. Conrail train and engine crews deliver a train of empty cars to the MGA-Conrail interchange point at West Brownsville, Pennsylvania. MGA train and engine crews report to duty at Brownsville and thus, the empty coal trains frequently sit idle for up to three hours at Brownsville while the MGA crew members are reporting to their on duty point, and being transported to West Brownsville. The MGA crew operates the empty train to the coal producer for loading. Since all MGA crew members are compensated at yard rates, as if they are performing yard service, another MGA crew must relieve the

first crew during the loading operation to avoid paying costly overtime compensation to the first crew. The second crew completes the loading process and operates the train back to West Brownsville where it is interchanged with the Conrail. Under the Carriers' proposed consolidation every facet of current train operations will change substantially. The new on and off duty point for all crews will be Waynesburg, Pennsylvania, a more centralized point than Brownsville. Conrail will run empty trains, originating at either Conway Yard in Pittsburgh or Conemaugh Yard at Johnstown, through West Brownsville to either Waynesburg on the west division or Maidsville on the east division (apparently, crews reporting to duty at the new crew base at Waynesburg will be transported to Maidsville, which is reasonably close to Waynesburg). Since crews will take over the empty trains at Waynesburg, the Carriers predict that a single crew can deliver the empty train to the coal producer, load and return it to Waynesburg within eight hours. Moreover, the Carrier optimistically forecasts that some crews may be able to make two or more turns to some mines.

In addition to a substantial alteration in how trains will operate over the former MGA, many, if not all MGA support activities, will be integrated into similar activities performed on Conrail. Thus, supervision, train and crew dispatching, customer service, and other administrative functions will be totally integrated into Conrail's system wide or regional facilities which presently perform identical functions.

The parties met on May 27, 1992, to discuss the terms and conditions of a New York Dock implementing agreement. According to the Organization, MGA Engineers negotiated with the Carriers for only about thirty minutes because most of the day was spent on negotiations between the Carriers, and MGA Conductors and Trainmen.[3] Despite the short bargaining session, the Carriers and Organization, thereafter, reached a tentative agreement on all issues surrounding the Carriers' proposed consolidation of MGA operations into Conrail, except, the two issues presented to the Arbitrator. The parties deadlocked on whether the MGA Engineers should come under the collective bargaining agreement applicable to Locomotive Engineers on Conrail or remain under the MGA scheduled engineers' agreement.[4] The Carriers served the July 3, 1992 formal notice, under Section 4 of the New York Dock Conditions, to invoke arbitration. Throughout the handling of this dispute on the property, the Organization reserved the right to raise the threshold issue of whether or not this Arbitrator has the authority to determine which collective bargaining agreement will apply to the MGA Engineers subsequent to the coordination.

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[3] Negotiations between the United Transportation Union (C&T) and the Carriers were fruitful. On July 2, 1992, the UTU(C&T) and the Carriers entered into a New York Dock implementing agreement, which among other things provided that the Conductors and Trainmen would be placed under the collective bargaining agreement in effect between Conrail and the UTU(C&T). The MGA agreement applicable to Conductors and Trainmen was terminated.

[4] In anticipation of reaching an arrangement whereby the MGA engineers would come under the agreement applicable to Conrail locomotive engineers, Conrail and the Brotherhood of Locomotive Engineers entered into an implementing agreement, dated September 18, 1992, to cover the consolidation of train operations. The implementing agreement, permits MGA engineers to be governed by the agreement applicable to locomotive engineers on Conrail, and provides that Conrail Engine Service Seniority District E will be expanded to include the entire MGA property.

III. THE POSITIONS OF THE PARTIES

A. The Carriers' Position

The United States Supreme Court and the ICC have both interpreted the Interstate Commerce Act to permit an arbitrator to abrogate a collective bargaining agreements on rail properties effecting an ICC authorized merger.

The Interstate Commerce Act exempts Carriers from all laws necessary to carry out a merger transaction. 49 U.S.C. § 11341(a). In Norfolk Western Railway v. American Train Dispatchers, 111 S.Ct. 1156 (1991), the United States Supreme Court adjudged that the statutory exemption extends to all laws including a railroad's bargaining and agreement obligations under the Railway Labor Act. Recently, consistent with the Supreme Court's ruling, the ICC decided that a collective bargaining agreement cannot impede a railroad's implementation of an approved transaction. CSX Corporation-Control-Chessie System Inc. and Seaboard Coast Line Industries, 8 I.C.C. 2d 715 (1992). Thus, the ICC has firmly ruled that not only are arbitrators free to change provisions of collective bargaining agreements where those provisions impede an authorized merger but also, because the arbitrator is an extension of the ICC, the arbitrator is actually under a duty to abrogate collective bargaining agreements which impair implementation of a transaction. Norfolk Southern Corporation-Control-Norfolk and Western Railway and Southern Railway, 4 I.C.C. 2d 1080 (1988). Therefore, the MGA Schedule

Agreement must give way to the Carrier's necessity to effectuate the transaction.

Continuation of the MGA Schedule Agreement would not just impede, but would defeat the entire merger. The Scope Rule in the MGA agreement prevents Conrail engineers from manning trains beyond the current interchange point at West Brownsville. Unlike the Conrail collective bargaining agreement applicable to Engineers, the MGA agreement does not provide a reasonable and feasible method for the Carrier to establish a new terminal. Thus, Conrail would have to retain the inefficient West Brownsville terminal, more than 25 miles from the proposed Waynesburg crew base. Similarly, under the Carriers' proposed operational arrangement, all engineers will report to Waynesburg, regardless of whether the engineer will be operating on the east or west division, yet the MGA agreement calls for maintenance of extra lists at both South Brownsville and Maidsville. The MGA agreement continues to recognize the craft and class of firemen and so displaced engineers can presumably hold riding firemen positions.[5] On Conrail, the firemen's craft has been eliminated and in its stead, the UTU(E) and Conrail created the reserve engine service employment program. To establish interdivisional service on the MGA, the Carriers' must follow the negotiation and arbitration provisions of Article IV of the October 31, 1985 National Agreement. An arbitrator could impose conditions so onerous that Conrail would be precluded

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[5] There are 32 active Engineers on the MGA. Conrail proposes that MGA Engineers be governed by the collective bargaining agreement covering Conrail Engineers and that those employees listed on the MGA Firemen Roster, when not working as Locomotive Engineers, would be governed by the agreement between Conrail and the UTU(E) which covers the reserve engine service craft.

from instituting interdivisional service from Conway yard to Waynesburg. Under the Conrail agreement, if certain conditions are met, Conrail may unilaterally institute interdivisional service. Clearly, the Carriers could not achieve the goals of the transaction if the MGA agreement remains in effect. Therefore, concomitant with his ICC delegated authority, the Arbitrator must place the MGA Engineers under the applicable Conrail agreements.

Under the controlling carrier principle, the Conrail agreement applicable to Locomotive Engineers should apply to MGA Engineers subsequent to the transaction because MGA work and operations will have been completely integrated into Conrail. Railway Yardmasters of America and Union Pacific Railroad, NYD § 4 Arb. (Siedenberg; 5/18/83). Conrail, not the MGA, will operate all trains over the former MGA property. All MGA operations will cease. Conrail will not just be the controlling or dominant Carrier but the sole Carrier. Employees who are transferred to a controlling carrier, as part of a merger must leave their old collective bargaining agreement behind. Norfolk and Western Railway-Exception-Contract to Operate Trackage Rights, (Decided June 27, 1989). I.C.C. Finance Docket No. 30582 [Interstate Railroad Company]. The MGA Agreement becomes obsolete with the advent of consolidated operations totally controlled by Conrail.

The Carriers alternatively argue that even if the New York Conditions, as interpreted by the ICC, do not mandate abrogation of the MGA agreement, it cannot survive on the merged system because the

Locomotive Engineers' contract on Conrail is the only permissible labor contract covering the craft of engineers on Conrail. The ongoing propriety of a single agreement applicable system wide to all Conrail Engineers is preserved by the status quo provisions of the Railway Labor Act. The Northeast Rail Service Act of 1981 carried forward, as Section 708(A), the provisions of the Regional Rail Reorganization Act of 1973, as amended, which appeared in Section 504(D). These provisions provide for one collective bargaining agreement system wide for each certified craft on Conrail. The Conrail Privatization Act of 1986, placed the one system wide agreement per craft provision within the status quo of the Railway Labor Act. Retaining the MGA agreement would establish more than one agreement for the same craft, on Conrail, in direct contravention of statutory law. None of the statutes permit multiple labor contracts covering the same craft in the event of a merger. If the Organization wishes for the MGA Engineers' agreement to survive, it must change the status quo through Section 6 of the Railway Labor Act.

In summary, the Carriers urge the Arbitrator to exercise his delegated authority to provide that the New York Dock implementing agreement contain a provision that the MGA Engineers will henceforth come under the applicable collective bargaining agreements between Conrail and its craft of Locomotive Engineers and Reserve Engine Service Employees.

B. The Organization's Position

The Organization questions whether or not an arbitrator adjudicating disputes under Section 4 of the New York Dock Conditions, has the authority to abrogate existing collective bargaining agreements unless the Carriers first exhaust the negotiation procedures mandated by the Railway Labor Act. Rather, the Arbitrator is limited to fashioning an implementing agreement which provides for a fair and equitable rearrangement of forces. Furthermore, Section 2 of the New York Dock Conditions preserves existing collective bargaining agreements.

In Brotherhood Railway Carmen v. Interstate Commerce Commission, the Court of Appeals for the District of Columbia Circuit decided that the statutory exemption in the Interstate Commerce Act did not empower the ICC to override collective bargaining agreements. 880 F.2d 562 (D.C. Cir. 1989). Early arbitration decisions issued under Section 4 of the New York Dock Conditions determined that arbitrators may not simply eradicate collective bargaining agreements. Norfolk and Western Railway Company and Railway Yardmasters of America, NYD § 4 Arb. (Sickles 12/30/81). Norfolk and Western Railway/Illinois Terminal Railroad and Brotherhood of Locomotive Engineers, NYD § 4 Arb. (Zumas; 2/1/82)

Conrail failed to show that it is necessary to apply its own work rules across the MGA territory. When feasible, employees in coordinated territories must continue to be governed by their own work

rules. Chesapeake and Ohio Railway/Baltimore and Ohio Railway and United Transportation Union, NYD § 4 Arb. (Cluster; 8/7/85).

Even if this Arbitrator has the authority to abrogate the MGA agreement, the absence of the MGA agreement would undermine an orderly selection of forces. Trying to equitably divide work between Conrail Engineers and MGA Engineers will be chaotic without the MGA agreement.

Since the MGA and the Organization recently renegotiated the MGA agreement, the Carriers obviously realized that leaving the MGA agreement intact would hardly impede the impending consolidation. Stated differently, if the MGA agreement is such an obstacle to the institution of consolidated and merged operations, the Carriers should not have negotiated a new schedule agreement back in March, 1992. Even though the Carriers have not shown that retention of the MGA agreement would thwart the establishment of consolidated operations, the Organization is willing to negotiate with the Carriers over existing rules in the MGA agreement to the extent that the rules might impinge on the institution of efficient consolidated operations. Changes in agreement language to accommodate specific operational problems can be negotiated without violently destroying the MGA agreement. The selection of forces should be done with as little intrusion into collective bargaining agreements as possible. Burlington Northern Railroad and United Transportation Union, MCC § 4 Arb. (Vernon; 3/29/91).

MGA Engineers would endure tremendous monetary hardship if they are placed under the agreement applicable to Conrail Locomotive

Engineers. In several respects including a higher reduced crew differential, the compensation for MGA Engineers in the MGA Schedule Agreement is greater than the compensation afforded to Conrail Engineers. Also, transferring the on and off duty point to Waynesburg will also cause personal hardships for many employees who have purchased residences based on reporting to work in Brownsville.

The Organization concludes that the Arbitrator lacks the authority to nullify the MGA agreement and, alternatively, and assuming that the Arbitrator holds such authority, the Arbitrator should retain the MGA agreement for current MGA Engineers.

IV. DISCUSSION

In 1991, the United States Supreme Court definitively resolved the decade long dispute over whether or not the ICC and arbitrators, who fashion implementing agreements under Section 4 of the New York Dock Conditions, had the authority to change, alter, or abrogate existing collective bargaining agreements. In Norfolk and Western Railway Company v. American Train Dispatchers/CSX Transportation Inc., v. Brotherhood Railway Carmen, the Court unequivocally ruled that Section 11341(a) of the Interstate Commerce Act permits the ICC and New York Dock arbitrators to exempt railroads from existing collective bargaining agreements to the extent necessary to carry out ICC approved transactions. 111 S.Ct. 1156 (1991).

The Court observed:

> "Our determination that § 11341(a) supersedes collective-bargaining obligations via the RLA as necessary to carry out an ICC approved transaction makes sense of the consolidation provisions of the Act, which were designed to

promote "economy and efficiency in interstate transportation by the removal of the burdens of excessive expenditure." Texas v. United States, 292 U.S. 522, 534-535, 54 S.Ct. 819, 825, 78 L.Ed. 1402 (1934). The Act requires the Commission to approve consolidations in the public interest. 49 U.S.C. § 11343(a)(1). Recognizing that consolidations in the public interest will "result in wholesale dismissals and extensive transfers, involving expense to transferred employees" as well as "the loss of seniority rights," United States v. Lowden, 308 U.S. 225, 233, 60 S.Ct. 248, 252, 84 L.Ed. 208 (1939), the Act imposes a number of labor-protecting requirements to ensure that the Commission accommodates the interests of affected parties to the greatest extent possible. 49 U.S.C §§ 11344(b)(1)(D), 11347; See also New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979). Section 11341(a) guarantees that once these interests are accounted for and once the consolidation is approved, obligations imposed by laws such as the RLA will not prevent the efficiencies of consolidation from being achieved. If § 11341(a) did not apply to bargaining agreements enforceable under the RLA, rail carrier consolidations would be difficult, if not impossible, to achieve. The resolution process for major disputes under the RLA would so delay the proposed transfer of operations that any efficiencies the carriers sought would be defeated. See, e.g., Burlington Northern R. Co. v. Maintenance Employees, 481 U.S. 429, 444, 107 S.Ct. 1841, 1850 95 L.Ed.2d 381 (1987) (resolution procedure for major disputes "virtually endless"); Detroit & T. S. L. R. Co. Transportation Union, 396 U.S. 142, 149, 90 S.Ct. 294, 298, 24 L.Ed.2d 325 (1969) (dispute resolution under RLA involves "an almost interminable process"); Railway Clerks v. Florida East Coast R. Co., 384 U.S. 238, 246, 86 S.Ct. 1420, 1424, 16 L.Ed.2d 501 (1966) (RLA procedures are "purposely long and drawn out"). The immunity provision of § 11341(a) is designed to avoid this result.

"We hold that, as necessary to carry out a transaction approved by the Commission, the term "all other law" in § 11341(a) includes any obstacle imposed by law. In this case, the term "all other law" in § 11341(a) applies to the substantive and remedial laws respecting enforcement of collective-bargaining agreements. Our construction of the clear statutory command confirms the interpretation of the agency charged with its administration and expert in the field of railroad mergers. We affirm the Commission's interpretation of § 11341(a), not out of deference in the face of an ambiguous statute, but rather because the Commission's interpretation is the correct one." 111 S.Ct. 1165, 1166

After the Supreme Court handed down its decision, the ICC, as it had done several times in the past, determined that arbitrators working under the delegated authority of the ICC, may write implementing agreements which exempt approved transactions from the Railway Labor Act and collective bargaining agreements subject to the Railway Labor Act. CSX Corporation-Control-Chessie System Inc., and Seaboard Coast Line Industries, 8 I.C.C. 2d 715 (1992). In that decision, the ICC expressly commented on the standard for determining whether or not the statutory exemption should be applied to a particular transaction. The ICC wrote:

> "Furthermore, the "necessity" predicate is satisfied by a finding that some "law" (whether antitrust, RLA, or a collective bargaining agreement formed pursuant to the RLA) is an impediment to the approved transaction. In other words, the necessity predicate assures that the exemption is no broader than the barrier which would otherwise stand in the way of implementation. It constrains the breadth of the remedy, not the circumstances under which it applies. 8 I.C.C. 2d 715, 721-722 (1992).

The ICC has thus decided that collective bargaining agreements must yield to the extent that the agreement provisions are impediments to carrying out an approved transaction.[6]

As the Organization points out, several arbitration decisions issued under Section 4 of the New York Dock Conditions in the early 1980's, found that, in view of the language in Section 2 of the Conditions, collective bargaining agreements must be preserved even if continuation of the agreements rendered it is infeasible for a

[6] Since the Arbitrator derives his authority from the ICC, the Arbitrator must strictly follow the ICC's pronouncements.

railroad or to realize the benefits (or efficiencies) of the transaction. However, the U.S. Supreme Court's holding, which overruled the D.C. Circuit Court of Appeals decision cited by the Organization, leaves no doubt that Section 4 prevails over Section 2.

Therefore, this Arbitrator is vested with the authority to decide the second question at issue, that is, whether the MGA Locomotive Engineers should remain under the MGA agreement or be placed under the agreement applicable to Conrail's Locomotive Engineers.

In this case, the Carriers presented overwhelming evidence that retention of the MGA agreement would effectively block the establishment of consolidated train operations and thus, completely undermine the ICC approved merger. Under the proposed consolidated operation, the prior distinction between MGA operations (and its employees) and Conrail operations (and its employees) will not just become blurred, but, rather, will be totally eliminated. MGA Engineers will be fully integrated into the Conrail system. They will no longer be identifiable (except to the extent that the Engineers might hold equity, preferential or prior rights over trains operating on the former MGA property).[7] Operations over Conrail and the former MGA will be homogenous. There will not be any interchange between Conrail and the MGA, because, pursuant to the ICC's authorization, they will henceforth constitute one railroad.

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[7] The MGA Engineers will also be identifiable for purposes of dispensing New York Dock protective benefits.

The absence of separate and distinct MGA train operations militates against retaining the MGA agreement. The Carriers persuasively pointed out that the MGA agreement could operate in numerous ways to effectively bar the institution of merged operations. As part of its approval of the merger, the ICC permitted the Carriers to initiate operational efficiencies, based on economies of scale and improved equipment utilization, to better serve the coal producers along the MGA line. Leaving the MGA agreement intact would certainly prevent the Carriers from changing existing equipment utilization and the present rail traffic patterns. The MGA agreement could bar a Conrail Engineer from operating on the former MGA property, prohibit the establishment of a centralized crew base, and require the Carriers to duplicate many administrative functions already performed by Conrail. Contrary to the Organization's argument, this not a situation where only one or two MGA agreement provisions are hindering specific aspects of the Carrier's operating plan. Rather, because this merger involves the complete integration of the MGA into Conrail, the totality of the circumstances compel a total abrogation of the MGA agreement. Stated differently, it is impossible to accommodate the transaction by amending a few rules in the MGA agreement. Retaining even a residue of the MGA agreement will impede the impending transaction since the agreement, in and of itself, would maintain the MGA as a separate railroad property which is anathema to the complete integration of operations.

Conrail is the controlling Carrier in the merger and thus, it is most appropriate to place MGA Engineers under the Agreement applicable to Locomotive Engineers on Conrail. Southern Railway-Purchase-Illinois Central Railroad Line, 5 I.C.C. 2d 842 (1989). Complete integration of train operations makes it unwieldy for MGA Engineers to carry any portion of the MGA agreement with them to Conrail. Imposing multiple agreements on the former MGA territory would render the coordination not just awkward but would thwart the transaction.

The Conrail agreement governing Conrail's Engineers differs from the MGA agreement. The Organization asserts that the level of total compensation in the Conrail agreement is below the level of total earnings accruing to Engineers under the MGA agreement. Assuming that the Organization's monetary calculations are correct, the ICC imposed the New York Dock Conditions on the Carriers for the specific purpose of protecting employees who suffer a wage loss as a result of changes in operations stemming for the merger. The amount of compensation which MGA Engineers are currently receiving will be included in their test period average earnings. Subsequent to the introduction of consolidated operations, if a former MGA Engineer does not earn compensation equivalent to the Engineer's test period average, because of a merger related change in operations, the Engineer will be afforded a displacement allowance in accord with Section 5 of the New York Dock Conditions. In conclusion, the protective provisions of the New York Conditions are designed to protect employees from being placed in a worse position with respect to their compensation.

To reiterate, this Arbitrator has the authority, under Section 4 of the New York Dock Conditions, to determine which schedule agreement will apply to MGA Engineers following the coordination and, the Arbitrator rules that, the MGA Engineers must be placed under the collective bargaining agreements applicable to Locomotive Engineers and Reserve Engine Service Employees on Conrail.

AWARD AND ORDER

1. The answer to the first stipulated issue in dispute is Yes.

2. The answer to the second stipulated issue in dispute is the collective bargaining agreements governing rates of pay and working conditions of Locomotive Engineers and Reserve Engine Service Employees on the Consolidated Rail Corporation.

Dated: October 29, 1992

John B. LaRocco
Arbitrator

JBL/dm
a:awards/conrail.utu

BEFORE AN ARBITRATOR ACTING PURSUANT TO THE NEW YORK DOCK CONDITIONS ARTICLE I, SECTION 4

Don A. Hampton, Arbitrator

In the Matter of:

SURFACE TRANSPORTATION BOARD Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY, GRAND TRUNK CORPORATION, GRAND TRUNK WESTERN RAILROAD COMPANY INCORPORATED – CONTROL – ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, etc.

Dispute Over Transfer of Train Dispatching Work

POST-HEARING BRIEF OF THE AMERICAN TRAIN DISPATCHERS ASSOCIATION AND ATDA EXHIBITS 17-18

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NUMBER	DESCRIPTION
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18	Declaration of ATDA Vice President David Volz

POST-HEARING BRIEF OF THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

Introduction

In its Pre-Hearing Submission, the American Train Dispatchers Association ("ATDA") described the events leading up to this arbitration and the standards that the arbitrator should follow in deciding which of the parties' competing proposals should be included in an implementing agreement. We explained each of ATDA's proposals and why they, rather than what the Carrier is suggesting, better adheres to the purpose and spirit of *New York Dock.*

What the Carrier presented at the hearing should not lead to a different conclusion. The Carrier, not surprisingly, focused on early arbitration awards when the "necessity" standard was either not existent or still in its infancy to argue that eliminating the ATDA collective bargaining agreement is simply an unconditional management right in these circumstances. Further, the Carrier challenged the arbitrator's authority to impose any part of the ATDA's proposal that was inconsistent with what CN/IC proposed. We show below that neither of these Carrier arguments is correct.

I. CN/IC Has Not Met the Standard for Overriding Existing Agreements.

A. The Development of the STB's Approach to Overriding Existing Agreements.

From the Carrier's Submission and presentation at the hearing, one would think that overriding existing collective bargaining agreements is simply the natural consequence of any STB-approved transfer of work. That simply is not the case. At least since the 1990 decision of the Interstate Commerce Commission in *CSX Corp. - Control - Chessie and Seaboard C.L.I.*, 6 I.C.C.2d 715 (*Carmen II*), the law has been "that CBAs and the RLA should not be overridden simply to facilitate a transaction, but should be required to yield only when and to the extent necessary to permit the approved transaction to proceed." *CSX Corp. - Control - Chessie and Seaboard C.L.I.*, 3 S.T.B. 701 (1998) ("*Carmen III*") (CN/IC Ex. 27, p. 12). The STB later confirmed that NYD arbitrators "are free to make whatever findings and conclusions they deem appropriate with respect to CBA overrides under the law." *Carmen III* - CN/IC Ex. 27, p. 19

(quoting *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 89 (1998)). There is no "one-size-fits-all standard respecting implementation of particular transactions." *Id.*

The necessity requirement is a "crucial limitation[that] restrict[s] CBA modifications that can be effected by an arbitrator under section 4." *Id.* p. 24. "[A] CBA override can be effected only where there are transportation benefits of the underlying transaction; it cannot be effected if the only benefit of the modification derives from the CBA modification itself." *Id.* p. 26. The Board has made clear that a carrier proposing a CBA override must demonstrate with "reasonable particularity" the changes that are "clearly necessary to make the merged entity operate efficiently as a unified system rather than as two separate entities" – "arbitrators should not assume that all pre-transaction labor arrangements, no matter how remotely they are connected with operational efficiency or other public benefits of the transaction, must be modified to carry out the purpose of the transaction." *Id.* at 27 (quoting *Fox Valley & Western Ltd. - Exemption Acquisition and Operation - Certain Lines of Green Bay and Western Railroad Company, Fox River Valley Railroad Corporation, and the Ahnapee & Western Railway Company (Arbitration Review)*, Finance Docket No. 32035 (Sub-Nos. 2-6) (1995)).

B. The STB's Underlying Approval Decision Offers No Solace to the Carrier.

CN/IC would have the arbitrator believe that because it told the STB it intended at some point to conduct all train dispatching from Homewood, the STB approved elimination of the ATDA collective bargaining agreement with GTW. Examination of the Carrier's filings with the STB and the Board's decision itself reveal this to be a significant exaggeration.

In its Approval Decision (CN/IC Ex. 1, p. 41), the STB cautioned "[s]pecifically, [that] our approval of this transaction does not constitute a finding that any override of a CBA is necessary to carry out the transaction; rather, such matters should be left to negotiation and arbitration." The Board also "constrained" *NYD* Article I, Section 4 arbitrators "only to make

those changes that are necessary to carry out this transaction as significantly limited by the Board in Carmen III." *Id.* at 42.

The Board described the then-existing train dispatching situation and the Applicant Carriers' intentions as follows:

> *Preservation Of Rates Of Pay, Etc.* Applicants have indicated: that there are currently three separate train dispatching centers on the combined CN/IC U.S. rail system (CN trains moving over the physically discrete GTW and DWP lines are dispatched from separate centers in Troy, MI, and Pokegama Yard near Superior, WI, respectively, and IC trains are dispatched from IC's Network Operations Center in Homewood, IL); that the three dispatching centers utilize separate train control and information systems and somewhat different operating practices; that the CN/IC control transaction offers the opportunity to consolidate the dispatching functions and to unify operating practices for the GTW/DWP and IC lines in a manner that will improve efficiency, service, and safety; and that, in order to achieve these changes and efficiencies, it will be necessary to bring these dispatching groups under a single CBA with a single seniority roster.
>
> Applicants have further indicated: that, following implementation of the CN/IC control transaction, the dispatching function will be consolidated at Homewood; that the physical relocation, the training on various dispatching systems, and the unification of operating practices will be accomplished in distinct steps; that there will therefore be, for a short interval following the physical relocation, three dispatching operations at Homewood; that, during this interval, the GTW/DWP and IC dispatchers will continue to dispatch their own territories using the equipment and processes with which they are familiar (and, although they will be under the same roof, will dispatch as though they were separate entities); and that, during this interval, a combined operating practices rule book will be produced and the existing dispatching systems will be modified, and all dispatchers will be trained on CN/IC's consolidated U.S. operating rules. See CN/IC-7 at 176-78 and 204. See also the Revised Safety Integration Plan at 67-73.
>
> ATDD contends: that, during the "short interval" referenced by applicants (i.e., during the period that will begin with the physical relocation to Homewood and that will end with the actual consolidation of train dispatching operations), it will not be necessary to bring the three dispatching groups under a single CBA with a single seniority roster; that, until such time as all train dispatching systems themselves are unified, the carriers should be required not to disturb existing collective bargaining relationships; that, because there will be, during the "short interval," separate dispatching operations, there is no warrant for any disruption of CBAs or representation during that interval; and that any disruption of ATDD's existing representative status and agreements would undermine the stability of the labor/management relationship. ATDD further contends: that, even assuming arguendo that pre-transaction representation arrangements are not a "right, privilege or benefit" that must be preserved, no CBA provision may be modified if the modification is not necessary to implementation of the transaction; and that there is, in the present context, no necessity at all, given that ATDD-represented GTW dispatchers are scheduled to continue to work independently from the other

train dispatchers at Homewood, just as they did in Troy.

CN/IC Ex. 1, p. 135.[1]

What the Carrier's February 3, 2009 Notice to Employees announced was the move from Troy to Homewood prior to the "short interval" that the Applicants described to the STB. At no time since has CN/IC indicated that it would be eliminating the period during which "following the physical relocation, ...the GTW/DWP and IC dispatchers will continue to dispatch their own territories using the equipment and processes with which they are familiar (and, although they will be under the same roof, will dispatch as though they were separate entities)." Consequently, the Carrier has not shown that elimination of the ATDA CBA is presently necessary to effectuation of the move of the GTW dispatchers to Homewood. The evidence at the November 10 hearing bears out what ATDA said in its Pre-Hearing Submission (p. 8): "The Carrier has no current plan to operate over the GTW, IC, and WC tracks as a single system" and "the GTW system is not being integrated with the rest of the CN/IC system." In such circumstances, the Carrier, as the advocate of an agreement override, has not carried its burden to show that eliminating the ATDA CBA is necessary to effectuate the move to Homewood.

The Carrier has relied on four purportedly "obvious efficiencies" to support its position that the GTW employees should not carry their CBA with them to Homewood: "eliminating the need to rent space in Troy, the integration of equipment, combined managerial and IT support, and the operational flexibilities that arise naturally from combining work." CN/IC Submission, p. 9. If anything is obvious, it is that the first three of these items have nothing to do with the ATDA CBA and that the fourth is premature as there is no evidence that assignment of work across GTW-IC operating lines is imminent.

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[1] At the time, ATDA was known as the American Train Dispatchers Department of the Brotherhood of Locomotive Engineers ("ATDD").

C. Established STB and Arbitral Precedent Dictate that the Carrier Prove That Eliminating the ATDA CBA is Necessary to Implementing the Transfer of GTW Dispatching Work to Homewood.

Relevant *NYD* and STB precedent establishes that a *NYD* arbitrator *may*, but is not required to, allow a carrier to override provisions of a collective bargaining agreement. As ATDA pointed out in its Submission, a *NYD* arbitrator may impose an implementing agreement that overrides a CBA "only when necessary – not merely convenient – to effect an approved transaction and realize a transportation benefit such as enhanced efficiency or greater safety." *Burlington Northern Santa Fe Railway Company and Brotherhood of Maintenance of Way Employes*, F.D. No. 32549 (Sickles, 1999) (ATDA Exhibit 14), p. 21. CN/IC has made broad statements regarding efficiencies, but it has not submitted proof to back up the argument that eliminating the GTW CBA is necessary to accomplishing them. In these circumstances, the GTW Agreement should continue to apply until there is a single system for purposes of train dispatching. At that time a single system agreement can be negotiated. *See Rio Grande Industries Inc., etc., vs. Brotherhood of Locomotive Engineers - ATDD Division* (Suntrup, 1994) (ATDA Exhibit 17).

In addition, CN/IC's resistance to continuing to apply the GTW Agreement after the covered dispatchers and their work move to Homewood is based on precedent that is factually inapposite. For example, CN/IC quotes from *BMWE v. Union Pacific R.R. Co.* (Meyers, 1997) (CN/IC Ex. 36) without acknowledging that the transaction in that case was to "implement a system operation." The same was true in *CSX Transportation and IBEW* (Simon, 1997) (CN/IC Ex. 38) ("consolidate...radio repair work which is currently being performed throughout the CSXT System and to have such work performed thereafter on a coordinated basis...in a Centralized Radio Service Center"(p. 3); "no way to distinguish what work belonged to a particular agreement"(p. 9)); *B&O Railroad Co. and BRS* (LaRocco, 1989) (CN/IC Ex. 31) ("When the shop signal repair work is commingled..., any specific piece of work will not be readily identifiable as [other former property] repair work" (p. 25)). *See also Consolidated Rail*

Corporation and Monongahela Railway Company and UTU, F.D. No. 31875 (LaRocco 1992) (ATDA Exhibit 16) (total elimination of one of two former systems as the two systems became "homogenous [and] they will henceforth constitute one railroad."). Here, the Carrier will continue to conduct separate and distinct GTW and IC train operations for some time after the transfer of work.

Here, as the Carrier admits, there will be no systemwide train dispatching. Instead, groups of dispatchers from several properties will continue to control rail traffic over their former territories. Operating under separate CBAs, as the carrier always has as to these employees and territories, will not impede the efficiencies it will obtain by putting the dispatchers under the same roof because separate system operations will continue. Unlike the N&W shop signal repair work and the CSXT radio repair work, dispatching on the "physically discrete" GTW lines (see p. 3, *supra*) is easily identifiable work.

D. CN/IC Has Presented No Valid Reason for Denying GTW Dispatchers The Continuing Right to Perform Work on GTW Territory.

The Carrier says its proposed allocation of forces is equitable. That is only true as to those GTW dispatchers who successfully bid the 10 positions initially being created at Homewood. The Carrier may be providing non-dispatching jobs to the others, but it is proposing to eliminate the existing roster and with it all rights to dispatching work for the others. Even as dispatching vacancies occur in Homewood, under CN/IC's proposal, the Carrier will not offer transfers to the remaining six members of the GTW dispatching corps. Instead, the Carrier proposes to fill the vacancies with new hires. ATDA proposes that a right of first refusal be granted the remaining six, rather than penalize them for a work transfer beyond their control. Retaining the GTW dispatchers' seniority roster will secure the preservation of that right.

CN/IC suggests that offering these employees clerks' positions is enough to satisfy its obligations. That is not consistent with even the arbitral precedent it has put before the arbitrator. In *Seaboard System Railroad and American Train Dispatchers Association* (Marx, 1985) (CN/IC

Ex. 32), Seaboard proposed to shut down its Birmingham train dispatching office and transfer the work to other offices without increasing the workforce at those offices. None of the Birmingham dispatchers were offered positions at the other offices. ATDA proposed that the Birmingham dispatchers' seniority rights be preserved "in the event that the rearrangement of work does lead to new Train Dispatcher work opportunities in the locations where the work is assigned." *Seaboard* p. 13. The *NYD* arbitrator held that this was "entirely proper," citing with approval the observation of the arbitrator in *Baltimore & Ohio, etc. and Brotherhood of Maintenance of Way Employees, etc.* (Seidenberg, 1983) to the same effect.[2] Similarly, in the CSXT radio repair consolidation case involving the movement of IBEW members' work to a TCU-represented location (CN/IC Ex. 38, p. 27), the arbitrator rejected CSXT's position that the non-transferring employees lose all rights to the work being moved. Instead, he adopted IBEW's proposal providing for the IBEW-represented employees with seniority at the locations from which work was being transferred to be able to bid on repair work vacancies that occurred post-transfer. He explained that "[n]ot giving these employees prior rights to such positions would make it possible for the Carrier to restore the remaining abolished positions and make them available only to TCU-represented employees. This would not be equitable."

This case is considerably different from *CSX Transportation, Inc. and ATDA* (Ables, 1988) (CN/IC Ex. 33). In that case, the work of four ATDA-represented employees holding positions as Assistant Chief/Power at Corbin, KY, was being transferred to Jacksonville, FL, where it would be performed by management personnel, who already were performing the same work for the rest of the CSX system. All of the Corbin jobs were being eliminated and none of the workforce was being relocated. Consequently, there was no possibility that future vacancies

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[2] "While it is unquestioned that the B&O has the sole discretion to determine the size of the work force it wants to use from the NS&S forces...this does not mean that the B&O can, or should be permitted, unilaterally to extinguish the vested seniority...rights of inactive NS&S employees. The B&O intends to operate on NS&S territory and it is inappropriate for the B&O to take action that would cause the N&SS to lose permanently their recall rights to work on NS&S territory, if the exigencies of operations should warrant such a happy state."

might occur that the displaced Corbin employees could fill. Here, the opposite is true.

While CN/IC would immediately dovetail the ten transferring dispatchers with the IC dispatchers and eliminate the GTW roster along with continuing rights of the six remaining at Troy, there is a possibility (and we suggest a likelihood) that there will be future additional opportunities to perform dispatching over GTW territory. Moreover, contrary to CN/IC's position, no consolidation of rosters or seniority dovetail is even necessary until the Carrier begins operations as a single system. The Carrier does not even mention the presence of the ATDA-represented Wisconsin Central dispatchers who also work in the same facility at Homewood and also have an interest should that single system be implemented. Even though they transferred in from somewhere else, they have not been integrated into the IC roster and retain a separate presence at the facility.

Moreover, the arbitrator should not ignore the dramatic difference between what GTW pays its train dispatchers and its clerks. Currently, GTW train dispatchers earn $75,175.83 per year in basic pay ($288.03 per day x 261). By contrast, GTW pays TCU-represented clerks $ 50, 571.36 per year ($24.22 per hour x 8 x 261). NYD protects those GTW dispatchers from the adverse compensation effects for six years. But once that ends, they will spend the rest of their railroad careers working at significantly reduced pay if they are not allowed to retain rights to perform the transferred work as vacancies occur at Homewood.

In these circumstances, we submit that ATDA's proposal regarding allocation of forces is the more appropriate.

II. The Arbitrator Has Authority under *NYD* to Impose ATDA's Proposed Implementing Agreement.

The Carrier argues that the arbitrator's authority is so circumscribed that nothing more than the explicit language of the *NYD* Conditions may be incorporated into the implementing agreement. That is far too cribbed a view of what a *NYD* arbitrator is empowered to do. As arbitrator John LaRocco explained in one of the awards the Carrier relies on here, an

implementing agreement imposed in Section 4 arbitration not only should encompass those benefits explicitly described in the Conditions, it also may include "benefits that draw their essence from the New York Dock Conditions without being specifically enumerated therein." *Norfolk & Western Ry. Co. and Brotherhood of R.R. Signalmen* (LaRocco 1989) (CN/IC Ex. 31) p. 24. *See also Chicago and North Western Transportation Company - Abandonment - Near Dubuque and Oelwein, IA*, 3 I.C.C.2d 729, 736 (1987) (ATDA Exhibit 11) (arbitrator has leeway to impose benefits not "specifically provided for" if they are "within the context and spirit" of the Conditions.).

The major purpose of *New York Dock* is to assure that employees adversely affected income-wise be protected from those adverse effects. ATDA has shown that there is a distinct higher cost of living (28.4% overall) in the Homewood area over the community where they now reside. Our proposal to soften that economic blow by a 10% pay adjustment is consistent with the practice followed by large corporations who relocate their employees. Likewise, ATDA's proposal to provide employment counseling assistance so employees find it easier to move with their families intact. So too ATDA's modest proposal to provide employees who move five paid days to locate a new residence in the Homewood area, with associated travel expenses. Lump sum relocation packages are now also the industry norm and do not stray from the purpose of *NYD*.

What ATDA has proposed falls well-within the spirit and intent of *NYD*. The fact that some provisions may be novel does not mean that they are prohibited. CN/IC, by contrast, would deny the affected GTW employees anything that is not explicitly stated in Article I. Its proposal therefore is less appropriate than ATDA's and should be rejected.

III. CN/IC's Description of the Pre-Arbitration Process is Inaccurate.

CN/IC would have the arbitrator believe that it was the Union, not the Carrier, who frustrated the bargaining process. But the facts show exactly the opposite. As explained in the Declaration of ATDA Vice President David Volz that accompanies this Brief (ATDA Exhibit

18), when the complete picture is presented[3], one can readily see that it took CN/IC a long time to get its proposal together and that, when the Union did not immediately agree but presented what the Union felt was in the employees' best interests, the Carrier regressed and stopped any bargaining at all.

The Carrier carps about ATDA being unavailable in February and March (CN/IC Submission at 4), but it ignores the fact that it did not have a proposal ready to present to ATDA until April 15, 2009. Volz Decl. ¶ 4. And when it did finally complete the proposal, it didn't give it to the ATDA until the Union's representatives showed up for bargaining on April 15, not "shortly in advance of the meeting" as the Carrier declares (CN/IC Submission p. 4). *Id.* Meeting in February or March would hardly have been fruitful when the Carrier had yet to formulate a proposal. When ATDA Vice President Volz explained to Ms. Cortez on February 18 that having a company proposal in hand "enhances the opportunity for a more productive meeting," Cortez responded "You are correct, I am working on getting you a proposal. Propose that we at least set up a conference call to address, *once you have a document in hand.*" CN/IC Ex. 7 (emphasis added). Not having received anything by March 23, 2009, Volz emailed Cortez to ask whether she wanted to confirm the April 15 and 16 meeting dates or she needed more time to complete the proposal. Volz Decl. ¶ 5. Ultimately, as the Carrier acknowledges, no proposal was tendered until April 15. The two-month interval between that meeting and the next in June (which was by conference call), was by agreement of the parties. Volz Decl. ¶ 6.

When the April 15 meeting ended, ATDA General Chairman Joe Mason approached Hunt Carey, the Carrier manager who oversees train dispatching, about the company

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[3] The Carrier's recitation omits five emails and numerous phone conversations that occurred between the parties. The missing emails, dated March 23, April 13, April 29, May 4, and August 31, 2009 are in Attachment A to the Volz Declaration. The Carrier also ignores many of the phone conversations that occurred between Volz and Senior Manager-Labor Relations Cathy Cortez, the Carrier's representative responsible for the implementing agreement negotiations. Volz talked with Cortez about the implementing agreement on March 27, April 21, June 23, twice on June 26, July 13, July 23, and August 4, 2009. He also left messages for her that she didn't return; he, on the other hand, returned all of her calls promptly. Volz Declaration ¶ 3.

reconsidering its position concerning putting the GTW dispatchers under the IC Agreement. Carey said he'd consider that, but he never got back to Mason on the issue. Nor did Cortez. During the June 16 conference call, ATDA asked Cortez where the company stood on the IC agreement coverage issue, reminding her about Mason's conversation with Carey. She said she wasn't aware of this conversation and would talk to Carey to see if they were interested in revising their proposal and would let the Union know. ATDA advised that if the carrier was not going to revise its proposal, the Union would proceed to prepare and submit a counterproposal, which it did July 25, 2009, via email. Volz Decl. ¶s 7-8.

Despite CN/IC's accusations regarding ATDA, Cortez's own email (CN/IC Ex. 20) establishes that delays that occurred were not always occasioned by the Union: "I'm well aware that scheduling can be difficult, what with other bargaining, vacations, arbitration, family issues and travel restrictions. We have experienced all of those issues from our side of the table as well." Not surprisingly, this admission is not mentioned by the Carrier now. The simple fact is that there was no "pattern of delay" on the part of the Union. The process took as long as it did because both sides had conflicts that affected scheduling of bargaining sessions. Volz Decl. ¶ 9.

As for the Carrier's constant refrain that it was the only one who wanted to reach a voluntary agreement instead of going to arbitration, we direct the arbitrator's attention to Volz's August 31 email to Cortez, transmitting ATDA's counter to the Carrier's final proposal. Volz told her that ATDA continued to be willing to have further discussions in the hope of reaching a voluntary agreement. Cortez never responded to this invitation. Volz Decl. ¶ 10.

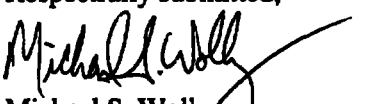
Finally, CN/IC's position is based on the fallacious assumption that the Carrier "bargained." What CN/IC did was present one proposal (from which it ultimately would not yield one iota), receive a counterproposal that it didn't favor, immediately invoke arbitration without even discussing the counterproposal, and then serve an egregiously regressive proposal

in response. Volz Declaration ¶ 11; CN/IC Ex. 19.[4] By any stretch, that is not "bargaining" - that is simply presenting an ultimatum.

CONCLUSION

For these reasons, the Carrier has not shown that it is necessary to eliminate the ATDA agreement nor that the other terms of its proposed implementing agreement better serve the purposes of *New York Dock*. Based on the parties' respective Submissions, the arbitrator should impose ATDA's proposed agreement as the basis for implementing the transaction.

Respectfully submitted,



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[4] As Volz told Cortez on August 1, the Union "never expected the carrier to dismiss our counter proposal without at least first discussing it. You suggest that there is still value in meeting, we don't see it. You have rejected our counter proposal and you told me on the phone that the carrier would not revise its original proposal, which was not acceptable to us. So, what's left to discuss?" CN/IC Ex. 19.

ATDA EXHIBIT 17

IN THE MATTER OF ARBITRATION

Parties to Dispute

Rio Grande Industries, Inc., SPTC Holding Inc. and the Denver & Rio Grande Western Railroad Company - Southern Pacific Transportation Company	)	
vs	)	New York Dock Article I (4) ICC Fin. Docket 32000
Brotherhood of Locomotive Engineers - ATDD Division	)	

Before

Edward L. Suntrup, Arbitrator

Appearances

For the Company

Wayne M. Bolio	-	Assistant General Counsel, SP
William E. Loomis	-	Dir. of Labor Relations, SP
Ray M. Winkenbach	-	Sen. Manager of Labor Relations, SP
Bruce Feld	-	Sen. Manager of Labor Relations, SP

For the Union

Michael S. Wolly	-	Zwerdling, Paul, Leibig, Kahn, Thompson & Driesen, Counsel for BLE-ATDD
Dean Bennett	-	Vice President, BLE-ATDD
Richard W. Ford	-	General Chairman, BLE-ATDD, SP-W
David W. Volz	-	General Chairman, BLE-ATDD, SP-E

Background

On December 3, 1993 the company issued a Notice in accordance with Section I (4.)(a) of the New York Dock Protective Conditions. That Notice read as follows.

> This will constitute the required 90-day written notice served pursuant to New York Dock conditions, Section I (4)(a) as imposed by the ICC Finance Docket 32000, of the intent of Southern Pacific Transportation Company (Western and Eastern Lines), Denver Rio Grande and

Western Railroad Company and St. Louis Southwestern Railway Company to consolidate train dispatching functions in Denver, Colorado. The purpose and effect of the transaction is to coordinate all dispatching functions in a single location to provide, in conjunction with the Transportation Services Center and the consolidated Customer Services Department, integrated and efficient train dispatching functions for the Carrier's rail lines. This work will then be performed in Denver, Colorado under the Agreement between the D&RGW and the Dispatchers' Steering Committee, and the rules and terms and conditions of employment applicable in Denver on the D&RGW.

It is anticipated the dispatcher positions in Roseville and Houston will be consolidated in Denver as result of this transaction, and that employees will be transferred to Denver. Effective upon completion of the transaction, it is anticipated that all dispatcher positions in Houston and Roseville will be eliminated. Should an employee be adversely affected as a result of this transaction, the conditions for the protection of employees enunciated in New York Dock Railway - Control Brooklyn Eastern District; 360 ICC 60 (1979), designated as New York Dock conditions, will be applicable.

Therefore, this 90-day written notice is hereby given pursuant to ICC Finance Docket 32000, New York Dock conditions, Section 4(a), which provides 'such railroad contemplating a transaction which is subject to these conditions and may cause the dismissal, displacement of any employee, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction' for the benefit of the employees who may be affected.

That Notice was issued in accordance with provisions of New York Dock Conditions which are cited here for the record, in pertinent part.

Article I (4.) Notice and Agreement or Decision

(a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days' written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending

registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days form the commencement of the hearing of the dispute.

.....

(b) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

On December 3, 1993 company's management also met with the

President, one of the Vice Presidents, and other officials of the BLE-ATDD. In that meeting company's management verbally notified those officials of the intended consolidation of dispatcher work to Denver. One of the company's Labor Relations' Directors also wrote, on that date, to the BLE-ATDD's General Chairmen located in Texas and California, in accordance with provisions of Article 1 (4) of New York Dock as cited above, that the Roseville and Houston dispatching facilities would be shut down and the work transferred to Denver.[1] On December 4, 1993 the company posted an Employee Bulletin explaining, among other things, that "...it is anticipated that these relocations (related to the transaction) would take place during the summer of 1994."

Negotiation Impasse & Arbitration Option

The parties conducted negotiations in accordance with the provisions of Article 1 (4.) of New York Dock and were unable to arrive at an implementing agreement within the time-lines stated therein. Accordingly, they opted for arbitration. The instant arbitrator was chosen by the parties to hold a hearing, gather evidence, and issue an Award. The date of the hearing was set for March 25, 1994. Locale which was acceptable to all parties concerned was the premises of the company's offices located in San Francisco, California.

Pre-Hearing Arbitral Rulings

Prior to the arbitration hearing, counsel for the union

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[1]One of these Chairmen had, in fact, been at the December 3, 1993 meeting with company's management when the proposed coordination was orally discussed.

requested that the arbitrator rule on a number of issues in order that the union could "...prepare for the upcoming arbitration...". After the arbitrator requested clarification, by counsel, of the issues at bar, and after permitting the company to also present its point of view on this request to produce, the arbitrator ruled on the matters in question on March 12, 1994.

The arbitrator rejected the union's request that the company produce economic facts which may have served as basis for the company's having undertaken the consolidation in the first place. The rationale for this ruling was that Article 1 (4.) of New York Dock does not provide an arbitrator with the authority to second-guess management's decisions with respect to coordinations and transactions. Since such was so, there was no need to introduce economic facts of the type requested, into the record.

The union also raised the issue of the pertinent union contract which would cover the dispatchers at Denver, Colorado after the coordination and asked the arbitrator to rule on this matter. The union raised this issue for the obvious reason that it had been addressed by the company's original December 3, 1993 Section I (4.) Coordination Notice to the BLE-ATDD, and elaborated on by the company on that same date when it sent out a concurrent memo to all pertinent employees working in the Roseville,

California and Houston, Texas train dispatching centers.[2] Although the arbitrator had no information on this at the time of the pre-hearing rulings, both sides had also included labor agreement coverage as a tentative provision in their implementing agreement proposals and counter-proposals to each other during negotiations prior to going to arbitration.[3] The arbitrator issued a preliminary ruling on this matter prior to the hearing. In that ruling he stated that it was his view that he had no authority under Article 1 (4.) to resolve the issue of which collective bargaining agreement would be the proper one dispatchers at the Denver consolidated dispatching center. During and after the hearing the BLE-ATDD requested that the arbitrator reconsider this ruling. In view of the importance of this issue it will be addressed again in this Award by the arbitrator, not only in the light of the pertinence, if any, of a subsequent NMB ruling on representation of dispatchers on the SPL, but also because the arbitrator now has a full record before him which was not the case when the pre-hearing ruling was made.

The arbitrator then issued preliminary rulings on other pre-

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[2]Union Ex. H, @ p. 2. The company was very explicit on this issue in that memo. The language it used is cited here for the record.

> "Upon transfer to Denver, employees (i.e. Dispatchers) will no longer be represented by the ATDA union but will be represented by the Dispatchers Steering Committee which won an election conducted by the (NMB) replacing ATDA on 8/20/85...". (In July of 1993 the ATDA merged with the BLE & is referred to here in the record more correctly as BLE-ATDD).

[3]See Union Ex. I & J; Carrier Post-Hearing Exs. 5, 7 seq.

hearing matters raised by the parties with respect, for all practical purposes, to the arbitrability of issues subject to this forum under York Dock Conditions @ Article I (4.). Given information available at that time, however, the arbitrator added the proviso that he could not "...properly rule on these matters in toto until the arbitration hearing itself..." had been held and he had a full record before him.

The Jurisdictional Issue[4]

At the hearing, which took place as scheduled, counsel for the BLE-ATDD raised a threshold issue which neither the arbitrator nor the company had been apprised of prior to that time. That issue dealt with whether an arbitration hearing on an implementing agreement at Denver for the dispatchers should proceed under provisions of New York Dock @ Article I (4.) or whether, since a March 21, 1994 ruling by the NMB,[5] protections for dispatchers at Denver might not more properly be negotiated under the June, 1966 Agreement. The latter had originally been negotiated between the old ATDA, and the SPT and the D&RGW, respectively, when the latter

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[4]The jurisdictional question here deals with the proper provisions under which this arbitration forum should proceed. Such, of course, cannot be confused with the jurisdictional issue of which collective bargaining contract should properly cover the Denver Dispatchers after the coordination.

[5]That NMB ruling is discussed in the separate Award on the jurisdiction question raised by the BLE-ATDD and details related thereto need not be reiterated here. That ruling will be addressed later in this Award, however, when the arbitrator deals with labor contract(s) covering the Denver dispatchers after the coordination. The NMB ruling is found in: National Mediation Board, 21 NMB No. 44. NMB Case No. R-6165 & NMB Case No. R-6273 (NMB File No. C-6356) issued March 21, 1994. That ruling also deals with a Yardmasters/ TCU issue which is not pertinent to the instant case.

were both autonomous railroads as well as members of the National Railway Labor Conference (NLRC). The arbitrator issued a bench decision on this matter at the hearing. He ruled that the June, 1966 Agreement was not applicable to this proceeding. Further, in response to a request by counsel for the BLE-ATDD, the arbitrator has subsequently issued a written opinion on this same issue. That opinion is found in a separate Award, issued on the same date as the instant Award, which deals specifically with this particular jurisdictional question raised by the BLE-ATDD at the March 25, 1994 hearing. In that separate Award the arbitrator reaches the same conclusion that he did in his bench decision which was issued at the hearing.

What Collective Bargaining Agreement Should Cover the Dispatchers at the New Dispatching Center at Denver, Colorado After the Coordination: Is this Issue Properly Before This Board?

Beginning with the Notice by the SPL to the BLE-ATDD in December of 1993, through the negotiations by the parties in an attempt to come up with an implementing agreement for the Dispatchers in Denver per the coordination, up to and including this arbitration, a persistently thorny issue has remained which is endemic to the facts of this case and which is not uncommon to Dock Article 1 (4.) arbitrations. And that issue is: what collective bargaining contract should cover the SPL Dispatchers in Denver as the coordination there proceeds at the new dispatching center?

Position of the Parties

At the time of issuance of the Notice by the SPL under New York Dock @ Article 1 (4.), the company's position on this matter

was clear. The coordinated Dispatchers off the SP-W and SP-E would be covered by the labor contract which the D&RGW has had with the DSC since 1985. The DSC had been certified by the NMB on August 20, 1985.[6] Effective September 1, 1985 a document was drawn up by the Chief Transportation Officer of the D&RGW which dealt with the following issues: employees covered, bulletining of positions, vacations, sick leave allowance, salary, benefits coverage, and discipline.[7] In its negotiations with the BLE-ATDD over an implementing agreement the SPL had consistently held that the DSC-D&RGW labor agreement should be the binding one on all Dispatchers at the consolidated train dispatching center in Denver. The language suggested by the SPL in implementing agreement negotiations with the BLE-ATDD on this issue is unambiguous. That language, stated here for the record, is the following:

> "The current rules and working conditions applicable to train dispatchers represented by the Dispatchers Steering Committee in Denver, Colorado shall be the applicable collective bargaining agreement in the consolidated train

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[6] National Mediation Board (12 NMB No. 102, Case No. r-5537).

[7] See Carrier Post Hearing Ex. 4. Counsel for the BLE-ATDD has consistently criticized the status of this document as a labor contract. Apparently on grounds that the document does not have the signatures of the labor organization and the management representatives which is common procedure in most collective bargaining forums. The arbitrator is neither disposed, nor does he believe it is his role, in this case, to deal with such issue. The DSC has never stated that the document is not a contract, and the SPL has consistently stated that it is one. The arbitrator has no choice, nor any authority, to do other than accept this at face value.

dispatching center in Denver, Colorado."[8]

The SPL has never stated that the BLE-ATDD labor contracts currently in existence at SP-W and SP-E would go out of existence. Rather, it has argued that it did not propose any "...changes to existing agreements...". Evidently, the factual consequence of such position is that the BLE-ATDD Agreements on the SP-W and SP-E, while continuing to exist, would have no dispatchers to cover. The dispatching operations at Roseville and Houston were to be closed.[9] While arguing that it did not wish to make any change in existing agreements, the SPL has also argued, concurrently, that existing agreements are not portable under a New York Dock Article 1 (4.) Notice. In so doing it cites inter alia, the 1987 N&W, Southern v. ATDA (herein called: "SOC"), and the 1988 Southern Railway, Illinois Central Railroad v UTU (herein called: "Hayleyville") cases and accompanying New York Dock Article 1 (4.) arbitration Awards.[10] In those Awards, the arbitrator ruled that when employees are coordinated off one railroad to another the collective bargaining agreement left behind does not travel with those being transferred. In the 1987 "SOC" case the ATDA,

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[8]This language is taken from the SPL's proposal to the BLE-ATDD on February 8, 1994 which was the last formal bargaining session between the parties. See inter alia, company Pre-Hearing Ex. 7 @ p. 1 (Section 1: (b)).

[9]To the extent that such language makes sense, they would be "empty" agreements, or existent agreements with no employees to cover.

[10] The former Award, referred to sometimes as the "SOC" or System Operations Center case, and the latter, referred to sometimes as the "Hayleyville Case" (Arbitrator: R. Harris) are found in Carrier Pre-Hearing Appendices 8 & 10.

predecessor to the BLE-ATDD in the instant case, argued that the N&W contract should travel with it to Atlanta on the Southern property where employees performing power distribution were non-represented. The arbitrator rejected such argument on a number of grounds, including the one which stated that New York Dock Protections "...(go) to individual employees, not to their collective bargaining representatives..." The arbitrator also noted that to permit the transfer of the N&W agreement to Atlanta would have involved the resolution of a representation issue, in that case, which is reserved only to the NMB.[11] In the "Hayleyville" case, the United Transportation Union (UTU) argued unsuccessfully before the same arbitrator that when employees were coordinated off the ICC to the Southern property the UTU-ICC agreement should have been portable. The UTU argued, in that case, on basis of provisions found in Article 1 (2.) of New York Dock. These were rejected by the arbitrator too. The latter based his conclusions on the 1985 ICC Maine Central Railroad case (Finance Docket No. 30532). Although, the arbitrator concludes, in "Hayleville", that Maine Central "...did not state specifically that the inconsistencies between Article I, Sections (2.) and (4.) of New York Dock Conditions are to be resolved in favor of Section (4.), that conclusion is inescapable."[12]

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[11] The arbitrator states, in that Award, that "The NMB has exclusive jurisdiction over representation matters." Appendix 8, @ 15. Of interest here, since that issue is raised, is that the NMB has already done its duty in Denver with respect to that question on the SPL in its March 21, 1994 ruling.

[12] "Halyeville" @ pp. 12-13 (Carrier Appendix 11).

In short, the SPL argues that the arbitrator has no authority to rule that the BLE-ATDD agreement off the SP-E and SP-W are portable to Denver. In its Reply Submission the company reiterates what it had argued more extensively in its earlier Submission and Brief to the arbitrator which is that: "...it does not view the Article 1 (4.) process as addressing broader issues of collective bargaining....". What should the instant forum limit itself to? The SPL states that it should be the following:

> "The task before this Board is merely to provide an implementing agreement that allows the Dispatching Center to become operational with as little disruption and inefficiency as possible, and with a means to achieving the positive benefits in such an operation."

Lastly, the SPL argues that it would be improper to apply NLRA successorship doctrine to this case since there is no precedent, coming either from the courts, or the ICC, to apply such doctrine to the RLA.[13]

In its final proposal before this arbitration forum on an implementing agreement for the Denver dispatchers the company states the following about a Denver collective bargaining agreement, which is cited here for the record. It proposes that the implementing agreement should state:

> "The current rules and working conditions applicable to train dispatchers in the Denver, Colorado office shall be the applicable collective bargaining agreement in the consolidated train dispatching center in Denver,

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[13]See Carrier Appendices 13 & 14 RLEA v. Wheeling & Lake Erie Railway & Norfolk & Western Railway (Civil Action No 90-0597-A), U.S. District Court for the Eastern District of Virginia, Alexandria Division, July 11, 1990.

Colorado."[14]

The BLE-ATDD, like the company, held from the time that the December 3, 1993 Notice was issued under New York Dock Article I (4.) until negotiations over an implementing agreement reached an impasse, that a collective bargaining agreement for the consolidated Denver dispatchers was a negotiable item as part of the implementing agreement. The BLE-ATDD just had a different view of which agreement(s) should apply to the consolidated dispatchers in Denver. Although the company disputes that this written document was ever presented to its negotiators at the February 8, 1994 negotiating session, the BLE-ATDD presents that written set of proposals, with amendments, to the arbitrator in this forum as its

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[14]See company's Post-Hearing Ex. 17. Section 1 (B). This proposal at first reading appears to be a pure tautology which states that the applicable agreement shall be the applicable agreement, when the question of an "applicable" agreement is precisely the issue at stake. The insertion of the adjective, "...current..." as modifier of "...rules and working conditions..." in the first part of the sentence, however, permits construction of that sentence to mean that the SPL still thinks that the DSC-D&RGW agreement is the one which should cover all dispatchers in the new Denver dispatching facility. It is clear from the SPL's submission that it believes that the BLE-ATDD, because it now has full representation rights over all SPL dispatchers, must use as basis the DSC-D&RGW agreement in Denver for any Section 6 filing. That position can be compared with the SPL's original position which states that DSC is the Denver bargaining agent, not the BLE-ATDD. The SPL states that "...the determination of the NMB in its single carrier ruling does not impact any of the issues presently before the Board...". This cannot be accepted at face value here since the SPL, because of that ruling, has changed its final proposal on Section 1 of the Implementing Agreement. As an addendum, and in what it calls a show of good faith, after the SPL argues that the BLE-ATDD ought use only the DSC-D&RGW contract in Denver as basis for a new, negotiated labor agreement, the SPL lists issues it deems pertinent to negotiations in Denver with the BLE-ATDD after a Section 6 filing takes place. See company Post-Hearing Brief @ 3-5; 39-42 & Post-Hearing Ex. 22.

last offer on an implementing agreement.[15] Of interest here is only that aspect of the proposals which addresses the question of collective bargaining contract for the dispatchers in Denver. For the record, the BLE-ATDD have proposed in negotiations, and continue to propose before this arbitration forum, the following.

> "The current SP/ATDA (Western Lines) Agreement(s) shall remain applicable to positions relocated from Roseville to Denver, the SP/ATDA (Eastern Lines) Agreement(s) shall remain applicable to positions relocated from Houston to Denver, until such time as the parties fulfill their commitment to reaching a single agreement.
>
> "Should a single working agreement be reached prior to the relocation train dispatchers' seniority will be dovetailed into a single seniority roster. Should two or more dates be the same, the standing on the roster will be determined by (1) length of service with the company, (2) age, or (3) lottery between those involved."[16]

The BLE-ATDD diverges from the stated, if not real, position of the company by proposing that this New York Dock forum resolve not only the issue of an implementing agreement, but also the issue of the proper collective bargaining agreement(s) which ought to apply to the dispatchers at Denver, as part of such implementing agreement.

The BLE-ATDD argues that it would be improper to abandon any agreement now in force for the Roseville and Houston dispatchers as these dispatchers move to Denver under the proposed coordination since a January 1, 1991 Agreement signed by the General Chairmen of the Eastern and Western Lines and company representatives contemplated such a consolidation and made allowances for it in the

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[15]See BLE-ATDD Post-Hearing Brief @ 1 referring to that document.

[16]BLE-ATDD Pre-Hearing Exhibit I.

intent of the language contained in that Agreement. Pertinent language of that agreement, according to the BLE-ATDD include but is not limited to the following:

> In the Carrier's letter dated May 16, 1989[17]...the parties agreed to review rates of pay and negotiate a single working agreement to cover the dispatcher offices in Roseville and Houston. To date, no action has been taken to reach that objective. The parties are committed to reaching an agreement, including consolidated rates. It is therefore, agreed:
>
> > 1. The parties shall commence the process of negotiating a single working agreement covering both Roseville and Houston. The agreement will establish uniform working conditions for both offices.
> >
> > 2. .....
> >
> > > (b) Rates of pay as set forth in Attachment A are in consideration of current and future consolidations and restructuring of Southern Pacific Lines train dispatching offices.[18]

This particular agreement was a variant on the national agreement reached that year, at the company's request, because of the

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[17]Which is found in BLE-ATDD Exhibit S. Therein one of the company's Senior Labor Relations' Managers writes, in pertinent part:

> "The current consolidation of the dispatching offices (in Roseville & Houston) will result in two offices on the Southern Pacific from which trains will be dispatched. Upon the completion of the consolidation, it will be the goal of the Carrier and the Organization to reach a single labor agreement covering both of these offices.
>
> "In conjunction with the negotiation of a new, single agreement, the parties will review the status of national negotiations in which the parties are currently engaged, and how such national negotiations or new single agreement affects the adjustments of rates of pay."

[18]See BLE-ATDD Exhibit Z.

economic conditions of the SP.

The BLE-ATDD argues then that after the move to Denver by the dispatchers all will be in a new facility, irrespective of whether they come off the SP-E, SP-W or the D&RGW, since One Corporate Center, which will house the dispatching center, was purchased in 1994 after the Notice of consolidation in December of 1993. The logical thing to do is to consolidate them all under either a new agreement to be negotiated, or at the very least, the SP-W Agreement.[19] According to counsel for the union: "...the simple fact is that there is no agreement in place at the new facility because it is just that, a new facility...It is not a D&RGW facility, it is a (SPL) facility...".

The BLE-ATDD then argues that traditional labor law principles dictate that employees in given collective bargaining units should bring their same contractual protections with them is such units are relocated to new sites.[20]

Given the position of the BLE-ATDD as outlined above its position on the Article 1 (2.)(4.) issue comes as no surprise. If Article 1 (4.), in pertinent part, states the following:

(4.)

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[19] The..."ATDD is willing to accept the application of the Western Lines Agreement to <u>all</u> of the transferring dispatchers" (Emphasis in original).See BLE-ATDD Post Hearing Brief @ 24, fn. 15.

[20]These arguments are cited in passing because they are presented by counsel. Whether, in fact, however, NLRA Section 8 precedent is applicable to a case such as this need not be addressed here since the arbitrator is in a position to reasonably frame conclusions on the issues raised herein without reference to such discussion.

> "...a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix...."

And if Article (2.) states the following:

> (2.)
>
> "The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (Including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes."

Then, according to the BLE-ATDD, the dispatchers cannot be moved to the new dispatching center in Denver without their current level of protection from their agreements being preserved.

Ruling

The BLE-ATDD refers to the facts of the instant case as having sui generis status. In comparing precedent cited by both parties, and with the full record before him, the arbitrator believes that such designation is not without foundation. Such is so for a number of reasons. At present, the union which has full representation rights for all dispatchers on the SPL, and consequently for the new dispatching center in Denver, is the one with contracts off the SPT property to which the December, 1993 Notice was directed. On the other hand, the labor organization with a contract for dispatchers off the D&RGW has lost representation status for those employees in view of the recent March 21, 1994 ruling by the NMB. Thirdly, it appears clear from the record that while the company issued a Notice to coordinate the Roseville and Houston dispatchers to Denver, the fact is that the dispatchers from all three current

dispatching points will be coordinated to a totally new dispatching center in Denver. As a matter of fact, as the BLE-ATDD points out, all three groups will be starting at a totally new facility when the dispatching center become operative. There has never been a labor contract covering dispatchers at the new Denver dispatching center because the facility, known as One Corporate Center, where the dispatching center will be located, had not existed prior to One Corporate Center's purchase by the SPTC in March of 1994.

The company's last proposal on an implementing agreement is that the dispatchers have labor contract protections when the coordination takes place at the new dispatching center in Denver which is that of the DSC-D&RGW labor agreement.[21]

The arbitrator is far from convinced, on basis of the record before him, that sustaining the company's position on this matter would produce reasonable, harmonious labor results as all of the SPT's dispatchers are coordinated from their present points to Denver and as the D&RGW dispatchers are moved from their current location in Denver to the new center. To sustain the company's position in these matters would not "...allow the Dispatching Center (at Denver) to become operational with as little disruption...as possible...", to cite the company's own language

[21]The union argues that all three of the dispatcher groups will be effectively coordinated because the D&RGW dispatchers will also be moved from their current Denver facility to the new Denver dispatching center. The company discounts this argument. The question, however, can be reasonably raised: does it make a difference if the dispatchers are moved two miles, or two thousand miles? Or put otherwise: is this case about geography, or is it about a coordination of all of SPL dispatchers to a new facility? Obviously, it is about the latter.

with respect to objectives to be achieved by means of an implementing agreement. The company's position would effectively put all of the current SPT dispatchers, irrespective of what point they come from when they move to Denver, under a labor arrangement originally applicable to some 10 to 15% of all SPL's dispatchers, and which was negotiated (if that is what happened, which is never really clear) by a labor organization which is not the one which now has the franchise to negotiate for any of SPL's dispatchers. It is true, as SPL states, that a Section 6 can be filed as soon as the BLE-ATDD wishes. But until a new labor agreement is negotiated at the Denver dispatching center, and despite all parties' good faith on this point, that may well take a long period of time under Section 6. In the meantime, the SPL suggests that all dispatchers fall under a contract which the BLE-ATDD argues is either no contract at all,[22] and/or which was negotiated for a minority of the dispatchers at a location which is not even the dispatching location where the new dispatching center will be. For the arbitrator to conclude that this is the proper route would lead, in his estimation, to extreme labor instability. It would also lead, as a matter of strategic advantage, to a major collective bargaining plus for the SPL as a mere side-effect of its coordination of dispatchers to Denver despite good faith promises by the company about a future contract which have been made before, but are not properly before, this forum and which, yet on the other hand, have not been tested in an actual Section 6 set of negotiations.

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[22]Which argument is not accepted by the arbitrator. See <u>supra</u>.

To accept the SPL's arguments before this forum would be tantamount to nullifying the labor agreements which it has negotiated with about 85 percent of its dispatchers, with the collective bargaining agent which now represents one hundred per cent of its dispatchers, in favor of an agreement which it has with the other 15 percent under an arrangement with a collective bargaining agent which has lost any and all representation rights.

Indeed, as a matter of logic it might be noted that while the SPL argues, on the one hand, that Article I (4.) of Dock forecloses any conclusions on labor contract issues of the type addressed in Article I (2.), SPL neverthless argues in favor of the BLE-ATDD using the DSC-D&RGW agreement as basis for negotiating a new, single agreement after filing a Section 6 and that reference to the DSC-D&RGW contract be incorporated into the implementing agreement in Section 1, at least elliptically, as stated in the foregoing.[23] SPL even outlines, in its new Section 6 Exhibit, what it would find amenable as amendments "...to incorporate into the former DSC

[23]There can be no other interpretation given to the phrase: "...the current rules and working conditions applicable to train dispatchers in the Denver, Colorado office..." (company Post-Hearing Ex. 17, Section 1 seq. as outlined earlier). The SPL argues that "...neither the NMB, nor this Board, should become enmeshed in issues of collective bargaining which remain to be resolved between the parties in the future..." (See Post Hearing Brief @ p. 3). This Board cannot avoid such entanglement since both parties propose that the coordinated dispatchers in Denver be covered by different collective bargaining agreements. What the SPL is apparently referencing here is that this Board cannot be party to amendments to whatever agreement(s) are found to be applicable at Denver as they are hammered into a single agreement after a Section 6 filing. Certainly, such negotiations are neither the business of this Board and/or of the NMB.

Denver agreement via the negotiation process."[24]

Beyond the conclusions which state that it would be unreasonable to have the DSC-D&RGW agreement cover all of the dispatchers at Denver when they move to the new dispatching center, there is other information of record which supports the conclusion that sustaining the company's position in these matters would produce an effect which is contrary to the stated, mutual intent of the majority of the parties themselves involved in the coordination. Such mutuality of understanding existed prior to the December, 1993 Notice which was filed by the company and this can be documented.

First of all, the SPT dispatchers' 1991 Eastern Lines' Agreement dealing with rates of pay, at least, unambiguously states, in referencing future consolidations, of which the contemplated move to Denver is certainly one, that such: "rates ...are in consideration of current and future consolidations and restructuring of Southern Pacific Lines train dispatching offices...". The December, 1993 Notice precisely addressed such future consolidation and restructuring, slightly less than three years after the language cited above was framed. The arbitrator cannot justifiably conclude that this language is without meaning. Secondly, the parties set as objective the achievement of one agreement for dispatchers off the SPT as early as 1989. At that time, the company stated to the union, also in unambiguous language, that it was the "...goal...(of both)...to reach a single

[24]See company Post-Hearing Exhibit 22.

labor agreement covering both of these offices (Roseville & Houston)...". That goal had never been reached, for various reasons, but the final consolidation of all dispatchers in the new Denver dispatching center makes such goal now not only a meaningful, logical objective, but the only thing that it is reasonably practicable for the parties to do. It is simply not tenable to conclude that the SPL will not have a single labor agreement with the dispatchers in Denver in the future and all parties to this arbitration know that. Further, the goal of a potential single agreement is enhanced because, unless there is some act of god in the near future to which this arbitrator is not privy, the recent NMB ruling provides the BLE-ATDD with representation rights for all dispatchers now working on the SPL, including those working on the D&RGW, and it can reasonably be opined that one, future labor agreement would cover the latter group also.

In view of the foregoing there is insufficient basis for the arbitrator to conclude here, as he did earlier in a pre-hearing ruling, and at that point without benefit of a full record, that the SP-E Agreement, and the SP-W Agreement as well, since it is intricately tied in with the latter, ought not continue to cover the Roseville and Houston dispatchers off the SPT as they are coordinated to the new Denver dispatching center until these agreements are combined into a single agreement, which latter objective the parties had set for themselves prior to the coordination. Even though the dispatchers to the DSC-D&RGW

Agreement are now represented, by administrative fiat, by the same union as those off the SPT, the arbitrator cannot find any reasonable basis to conclude, here, that the D&RGW dispatchers ought not also remain covered under their own DSC-D&RGW agreement[25] until their collective bargaining status is settled.[26]

All three agreements shall, therefore, be applicable to the new dispatching center in Denver. All three agreements shall continue to the cover the dispatchers that they have in the past. The SPL has already indicated that it wishes to proceed this forthcoming year with bargaining matters with the BLE-ATDD in an expeditious manner. The instant ruling will provide it and the BLE-ATDD with the occasion to do so on basis of agreements already existent which can be amended and/or condensed into one agreement as the parties see fit according to the objectives of unity set forth already by the SPT and the ATDA some five years ago.

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[25]Nor that the BLE-ATDD ought not inherit this agreement as one of the three to be used as basis for negotiating a single agreement by consolidating/amending it in conjunction with the SP-E and SP-W agreements into one agreement. Such conclusion is consistent with BMWE vs Guilford Transportation Industries, Inc (1992) cited the company in Post-Hearing Ex. 20.

[26]Contract portability arguments are simply not pertinent to the instant case in view of the reasoning developed here. Their application would lead to the non-tenable conclusion that none of the dispatchers' agreements should be portable to the new Denver dispatching center, and consequently, that the dispatchers would lose all labor agreement protections until a new, single agreement would be negotiated and ratified. Further, New York Dock Article I (2.) language would become totally meaningless if the dispatchers lost all contract protections, as a side effect of the coordination, during the hiatus between their move to the new dispatching center and the event of a new labor contract.

After studying the reasoning found in ICC's Maine Central (Finance Docket No. 30532) issued in 1985, as well as Article I, Section (4.) arbitration Awards issued thereafter which deal, as this one does, with the relationship between consolidations arising from an ICC order and the Railway Labor Act, the arbitrator is not convinced that the facts of the instant case would do other than uncomfortably fall under the shadow of principles and legal conclusions laid out in some of the above. It was not uncommon for arbitrators to conclude, prior to 1985, as they plainly construed the language found in Dock which was before them at Article I, Section (2.), that this Section was intricately related to Section (4.), and that the language of Section (2.) literally means what it says. Pertinent here is the language which addresses: "...and/or existing collective bargaining agreements or otherwise[27]..." which is found in Article (2.), as well as the language of Article I (4.) which refers to reaching agreement in an implementing agreement "...with respect to the terms and conditions of this appendix..." which pre-1985 arbitrators[28] concluded must obviously include also the Article I (2.) language since it was part of the appendix. It is an inescapable conclusion, in the instant case, that Article I (2.) here has application, by reference, since the parties themselves state, as noted earlier, their desire to extend applicability of agreements to later consolidations, as well as the

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[27]Which would even cover the DSC-D&RGW document which the BLE-ATDD has argued is not a (conventional) labor agreement anyway.

[28]Some later changed their minds on basis of ICC Maine Central (1985).

desire to mesh agreements into one.

While being informed by arbitral precedent after 1985 that the ICC does not specifically state that inconsistencies between Article I, Sections (2.) and (4.) are to be resolved in favor of Section (4.), as the company here would argue, we are nevertheless advised by some arbitral precedent that such "...conclusion is inescapable...".[29]. Even if such were so, strong arguments could be made here that any inconsistencies which may exist between Sections (2.) and (4.) of Article I, applicable to the vast majority of dispatchers involved in the instant case, are less than obvious.[30]

An Implementing Agreement for the New, Denver Dispatching Center

Positions of the Parties: Discussion

The issue of what collective bargaining agreement(s), if any, shall cover the dispatchers off the SP-E, SP-W and the D&RGW in the

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[29]See company Pre-Hearing Exhibit 10.

[30] There are legal arguments and conclusions associated with the history of Dock Article I (2.)/(4.) issue(s), the ICC Maine Central Railroad Co. case, and arbitration conclusions emanating therefrom which merit further reflections but which cannot be resolved here. Suffice it to mention what appears to be the curious, legal conclusion that an ICC Order may supersede collective work place protections for employees covered by provisions of a federal labor statute (RLA); that New York Dock Conditions provide protections to individual employees, which they certainly do, but not to collective bargaining representatives when the latter are inextricably bound to labor contracts outlined in Article I (2.); that Article I (2.) explicitly addresses "...existing collective bargaining agreements...", yet Maine Central appears to obfuscate any meaning which that language might have, if its interpretation according to some arbitrators is correct, and so on.

Denver dispatching center until a single collective bargaining agreement is reached between the representative for the dispatchers and the SPL is ruled on in the preceding section of this Award. Such will be taken into account by the arbitrator when final draft of an Implementing Agreement is presented.

Preamble of the SPL's last proposal refers to the rearrangement, transfer and consolidation of dispatching forces from Houston and Roseville "...into the existing train dispatching office in Denver, Colorado...". Such rendition of facts may have been correct at the time of the Notice of consolidation in December of 1993. But such is no longer correct since March of 1994. As noted in the foregoing, the record sufficiently establishes that a more proper rendition of the facts of the situation is that the Dispatchers off the SP-E and the SP-W will not be transferred and consolidated into an existing train dispatching office in Denver, but rather that the SP-E, SP-W and the D&RGW Dispatchers shall all cumulatively be consolidated in a new dispatching center which is being set up in a totally new facility purchased by the SPTC in March of 1994, some three months or so after the original transaction Notice was issued to the SP-E and SP-W Dispatchers. These facts will be taken into account by the arbitrator when a final draft of the implementing agreement is presented.

The company argues that the BLE-ATDD attempts to support its position with respect to certain substantive items it wishes in a Denver Implementing Agreement by citing as reference other Implementing Agreements as precedent. The company is specifically

referring to Implementing Agreements signed between the ATDA and railroads merged into the SPL as result of Notices issued from March 1, 1988 through January 10, 1989.[31] The company's argument that each of these prior agreements, however, cannot serve as precedent because of a disclaimer in each of those agreements, to that effect, is accepted by the arbitrator.[32]

The company reiterates in all arguments and documentation provided to the arbitrator on this case that in its view this New York Article I (4.) forum ought to limit itself to the narrow issues of "...seniority and selection of forces' concerns...". [33] The SPL proposes, before this Board, its last offer in Article I (4.) negotiations, [34] plus amendments. In its Post-Hearing Brief it explains that there are still certain issues in its proposal for an Implementing Agreement before this Board which may go beyond its

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[31]See Pre-Hearing BLE-ATDD Exs. L through O.

[32]Pertinent language in each of these four Agreements, which reads the same in every one of them, reads as follows:

> "The provisions of this Memorandum of Agreement have been designed to address a unique situation. Therefore, the provisions of this Memorandum of Agreement and Letters of Understanding attached were made without prejudice to the position of either party and will not be cited as a precedent in the future by either party."

Found on signature page of all Agreements cited by the BLE-ATDD in Pre-Hearing Exs. L through O.

[33]Arguendo, the issues of a labor contract at Denver having already been dealt with by the arbitrator in the foregoing.

[34]See BLE-ATDD Ex. J.

stricto dicto view of what Article I (4.) requires but nevertheless it is able to "live with" certain provisions in order to expedite matters and get an Implementing Agreement in place.[35] According to the SPL, it has deleted Sections 4(a)&(b), 7(d) and 9 (in totality) proposals from it final negotiation position and presents this to the Board for consideration. Section 4(a)&(b) deals with Houston & Roseville dispatchers' separation allowance benefits under Article I (7.) of New York Dock and details with respect to how the monies are to be received, etc.; Section 7(d) deals with advances of lump sums for dispatchers electing to relocate; and Section 9 deals with parking privileges for dispatchers working various shifts once at the Denver dispatching center.[36] The comparison of the two proposals in question also show change in language in Section 1 as noted earlier by the arbitrator. The company argues that the following issues should be excluded from an implementing agreement.

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[35]At the hearing the arbitrator addressed the issue of a "door having been opened during negotiations over various items in an implementing agreement" which might provide passage for including those same items in an arbitrated agreement. The SPL has responded, which the BLE-ATDD has not denied, that it did go beyond what was considered narrow Article I (4.) items in negotiations in order to get an agreement, and avoid arbitration. As a further gesture, as noted, the SPL has included in its final offer items which go beyond what it thinks are strictly required per a New York Dock arbitration. See company Post-Hearing Brief @ p. 22.: "There is no doubt that the Carrier proposed, during negotiations, substantive terms different than New York Dock. There is nothing in Article I (4.) that precludes the parties from voluntarily agreeing to a substantive set of benefits in addition to those specifically required by Appendix III."

[36]See company's Post-Hearing Brief @ pp. 8-9; Exhibit 17.

(1) Parking. This is not an Article I (4.) issue. Further, no other employees at Denver have parking privileges. (BLE-ATDD Side Letter 6)

(2) Ban on Realignment of Train Dispatcher Territories Without Involvement of the Action Council. This is not an Article I (4.) issue. This is a managerial prerogative not related to assignment & selection of forces. The company argues that this would "handcuff" it from "...making certain positive initiatives inherent in the transaction...". (BLE-ATDD Side Letter 13)[37]

(3) A Thirty (30) Day Training/Qualification Period. This is not an Article I (4.) issue. This is a managerial prerogative. Further, the company has suggested a $5,600 train waiver sum which it interprets as simply a stipend. (BLE-ATDD Side Letter 10)

(4) Fencing Arrangement. A One Year Ban On Displacements Or Bumping. This would place restraints on the company to assign forces, under a bumping or displacement situation, for a period of one year after first assignment of a dispatcher at the Denver dispatching center. According to the company, such constraint would create a "...logistical nightmare..." SPL argues that this is a specific job right issue which is not covered by New York Dock at Article I (4.) or any other agreement in effect "whether it be DSC or ATDD..."[38] The method of selection of forces ought be dealt with by dove-tailing the seniority roster. (BLE-ATDD Side Letter 2)

(5) A Penalty Assessed the Company On Monetary Benefits If the Transaction Is Not Completed By April 1, 1995. This issue is not properly an Article I (4.) one.[39]

The final position of the BLE-ATDD on an implementing agreement before this Board is the last proposals which it offered orally to the SPL during the last round of Article I (4.)

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[37]Also see BLE-ATDD Pre-Hearing Submission @ pp. 24 seq. & BLE-ATDD Exs. Q & V inter alia. on the Action Council and Memorandum Agreements relative to this Council.

[38]See company Post-Hearing Submission @ p. 24.

[39]See BLE-ATDD Pre-Hearing Submission @ pp. 25 seq. under title of Issue No. 12.

negotiations which were held on February 8, 1994, with amendments.[40] To this effect, counsel for the BLE-ATDD explains as follows:

> "In this arbitration the union is willing to accept an implementing agreement which omits the following provisions from that last proposal (orally offered on 2-8-94): Sections 4, 5, 6 & 8, and Side Letters 4, 7, 8, 11, 12, 14 --- provided that the agreement recites that the precise provisions of New York Dock apply to those incidents of the transaction not otherwise specifically addressed in the agreement (i.e. moving expenses, losses from home removal)."

The amendments represent the following deletions from the BLE-ATDD's last bargaining proposal. They are, in pertinent part, the following.

> (1) Section 4. Separation Allowance issues dealt with under Article I (7.) of New York Dock.
>
> (2) Section 5. Moving Expenses issues dealt with under Article I (9.) of New York Dock.
>
> (3) Section 6. Loss for Home Removal dealt with under Article I (12.) of New York Dock.
>
> (4) Section 8. Lump Sum Payments/Moving Expenses.
>
> (5) Side Letter No. 4. Deleted in conjunction with Section 4 above.
>
> (6) Side Letter No. 7. Deleted in conjunction with Section 5 above.
>
> (7) Side Letter No. 8. Delete letter addressing protections under Article 7 of SP-W Agreement.
>
> (8) Side Letter No. 11. Delete training waiver in lieu of cited sum.
>
> (9) Side Letter No. 12. Delete cited allowance for dispatchers displacing to Denver over term of two years.
>
> (10) Side Letter No. 14. Delete 2% monetary benefit to be

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[40]See BLE-ATDD Pre-Hearing Ex. I & Post-Hearing Brief @ p. 1

provided to dispatchers if transfer of forces to Denver have not be completed by April 1, 1995.

Findings

Arbitral findings here will address the following.

(1) Those issues raised by the parties which are New York Dock issues but not subject to Article I (4.). Detailed exceptions applicable to the Implementing Agreement are noted per proposals by the parties.

(2) Those issues raised by the parties which are not subject to an arbitrated Implementing Agreement.

(3) Those issues raised by the parties which may properly belong in an arbitrated Implementing Agreement to cover the coordination of Train Dispatchers to SPL's new, Denver, Colorado dispatching center.

Issues Raised by the Parties Which Are New York Dock Issues Not Subject to Article I (4.)

For all SPL Train Dispatchers displacing to the SPL's new, dispatching center in Denver, Colorado: the issue of displacement allowances shall be covered by Article I (5.) of New York Dock Conditions; the issue of separation allowances shall be covered by Article I (7.) of New York Dock Conditions; the issue of moving expenses shall be covered by Article I (9.) of New York Dock Conditions with exceptions/amendments as contained in the Implementing Agreement; and the issue of loss for home removal shall be covered by Article I (12.) of New York Dock Conditions with exceptions/amendments as contained in the Implementing Agreement. The first three issues cited above are subject, in individual cases, to arbitration procedures as outlined in Article I (11.) of those same New York Dock Conditions.

Issues Raised by the Parties Which Are Not Subject to An Arbitrated Implementing Agreement

The issues of parking privileges; the realignment of train dispatching territories per action of an Action Council; a thirty day training/qualification period; and a one year ban on displacement or bumping after first assignment of a Dispatcher in the SPL's new, Denver dispatching center are not Article I (4.) issues and must more properly be dealt with by the parties in some other forum.

The Implementing Agreement

The Implementing Agreement accompanying this Award takes into account the final proposals by the parties with respect to such an Agreement. These proposals and accompanying arguments have been presented by means of exhibits and briefs, and by means of arguments provided in arbitral hearing. In accordance with the instant Findings the Agreement outlined here shall apply to the Train Dispatchers who are being coordinated to the SPL's new, consolidated dispatching center at Denver, Colorado. Such Agreement further takes into account the SPL's observations and comments with respect to the need for the company to reach new productivity levels and a new posture of competitiveness, if it wishes to remain a continuing, viable railroad in the U.S. transportation industry.[41] As a matter of principle, it may be more salutary for parties to any negotiable employer-employee Agreement, whether

[41] "The purpose of the consolidation of train dispatching functions is to address the service performance and customer satisfaction problems...(which the SPL is currently experiencing)...". See company's Post-Hearing Brief @ 7 inter alia.

under federal or state labor law(s), or under provisions such as those found in New York Dock, if they could mutually arrive at their own understandings on framing such an Agreement. The weight of the history of employer-employee relations in the railroad industry, and in other industries in the U.S. provides evidence to support such principle. Evidently, however, the parties concluded that there were sufficient complexities associated with the instant case that such was not possible. An arbitrated Implementing Agreement, therefore, for the Southern Pacific Lines and its Train Dispatchers, represented by the American Train Dispatchers Department of the Brotherhood of Locomotive Engineers, is found in Appendix I attached to this Award. That Agreement is incorporated herein as integral part. That Agreement shall govern the transaction involved in the Southern Pacific Lines' coordination of its Train Dispatchers to its new, Denver, Colorado dispatching center.

Award

The parties to this proceeding shall be bound by the conclusions outlined in the instant Findings, and by the Implementing Agreement which is integral part of this Award and which is attached hereto as Appendix I.

Edward L. Suntrup, Arbitrator

Michael S. Wolly
Zwerdling, Paul, Leibig, Kahn,
Thompson & Driesen
Washington, D. C.
Representing the BLE-ATDD

Wayne M. Bolio
Assistant General Counsel
Southern Pacific Lines
San Francisco, California
Representing the SPL

Denver, Colorado

Date: 5-25-94

APPENDIX I

Arbitrated Implementing Agreement

between

Southern Pacific Lines

and

Train Dispatchers
Represented by
American Train Dispatchers Department
Brotherhood of Locomotive Engineers

MEMORANDUM OF AGREEMENT

between

Southern Pacific Lines (SPL)

and

American Train Dispatchers' Department
Brotherhood of Locomotive Engineers (BLE-ATDD)

This arbitrated Agreement provides for the rearrangement, transfer and consolidation of all of the Southern Pacific Lines' Dispatchers to the company's new, dispatching center at Denver, Colorado.

Section 1

(A) The rearrangement, transfer and consolidation of train dispatching forces will commence on or after April 1, 1994 and continue until fully implemented.

(B) The following three collective bargaining agreements shall remain in effect, and shall continue to cover the Dispatchers whom they covered prior to the coordination to the new, dispatching center at Denver, until the Southern Pacific Lines and the American Train Dispatchers' Department of the Brotherhood of Locomotive Engineers reach a single collective bargaining agreement to cover all Dispatchers at the new coordinated facility:

(1) Southern Pacific-American Train Dispatchers Association (Western Lines) Agreement (ATDA-SP-W Agreement);

(2) Southern Pacific-American Train Dispatchers Association (Eastern Lines) Agreement (ATDA-SP-E Agreement);

(3) Denver & Rio Grand Western-Dispatchers Steering Committee Agreement (DSC-D&RGW Agreement).

(C) All Train Dispatchers' seniority on the SPL will be dovetailed into a new, single, seniority roster. Should two (2) or more dates be the same, standing on the roster will be determined by: (1) length of service with the SPL, or with any present or former corporate railroad entity which has merged to form the SPL; (2) age; or (3) lottery between those involved.

Section 2

(A) Initial assignment of Train Dispatchers being transferred to the new, dispatching facility shall be by advertised Bulletin. Bulletins on all positions in Denver: (1) shall be posted at all locations where SPL Dispatchers currently work and/or; (2) shall otherwise be made available to all SPL Train Dispatchers. Vacancies occurring in the Denver dispatching center will be filled in accordance with seniority on the new, single, dovetailed seniority roster.

(B) An employee who currently holds seniority as a Train Dispatcher and who has been promoted within the company, or who occupies a full-time position with the union, or who has been on any other authorized leave of absence, and who returns to the train dispatching services as a Train Dispatcher, shall be allowed to follow the work of his or her former office to the new Denver dispatching center in accordance with their seniority on the new, single, dovetailed seniority roster. Such employees shall receive all permissible benefits which would accrue to Train Dispatchers, as of the date of this Agreement, under New York Dock Conditions, and under this Implementing Agreement, if they return to train dispatching services on the SPL within five (5) years from the date of April 1, 1994 except as follows: they shall be entitled to no New York Dock benefits under Article I (9.) and (12.). If disputes arise with respect to what other New York Dock benefits these employees returning to the Dispatchers' craft should receive, such disputes may be resolved by resort to the provisions of New York Dock Conditions, Article I (11.).

(C) Should the Company re-establish train dispatching offices in the territory encompassed by the SPL, Train Dispatchers remaining in the service of the Company as Train Dispatchers who are currently covered by the ATDA-SP-E and ATDA-SP-W Agreements, and who were required to relocate and did relocate under this Implementing Agreement, shall have the option to return to the location from which they relocated.

Section 3

(A) For purposes of this Agreement, the twelve (12) month period used for the calculation of test period average compensation and time paid set forth in Article I (5.)(a), second paragraph, of the New York Dock Conditions, shall be the following: April 1, 1993 through and including March 31, 1994.

(B) Representatives of the BLE-ATDD who were absent on any day during the test period from their regular train dispatching assignment, and representatives of the DSC who were absent on any

day during the test period from their regular train dispatching assignment prior to March 21, 1994, and who lost actual time therefrom in order to attend meetings or perform other union related functions will, for the purposes of calculating such test period averages, be considered as having performed service on such days. Further, such days shall also be included as qualifying time for other benefits such as vacations and so on.

Section 4

(A) Train Dispatchers working for the SPL who are subject to this Implementing Agreement shall, within one hundred (100) days of the retroactive date of this same Agreement, which is April 1, 1994, advise the Company in writing if he/she intends to relocate to the new, Denver dispatching center.

(B) The Company will furnish each individual Train Dispatcher covered by the ATDA-SP-E and ATDA-SP-W Agreements who indicates that he/she intends to relocate, an informational manual to assist in their relocation. Said manual will be furnished upon the Train Dispatcher's written notification of intent to relocate. Train Dispatchers under the DSC-D&RGW Agreement who already work in the Denver area shall receive no relocation benefits, of any kind, under this Implementing Agreement.

(C) The Company will also make arrangements to have a relocation company assist Dispatchers who are covered by the ATDA-SP-E and ATDA-SP-W Agreements obtain a place of residence in the Denver area. The agency will show the new resident such things as transit systems and local neighborhoods. The Train Dispatcher will be advised of a specific person at the relocation company to contact.

Section 5

(A) In the event that there is more than one employee in a household entitled to benefits under New York Dock Conditions, Article I (9.) and (12.), who is covered by either the ATDA-SP-E or the ATDA-SP-W Agreements, or any other company policy, there will be no duplication of payments. The employee not receiving the stated benefits, however, will be entitled to seven (7) days' lost wages, and a two hundred dollar ($200.00) meal allowance. Lost wages and meal allowance payments shall be made to said emplyees by the Company within thirty (30) days of reception of meal receipts by the company from the employee.

(B) In the event that a residence of a Dispatcher who is covered by either the ATDA-SP-E or ATDA-SP-W Agreement is jointly owned with someone other than the Train Dispatcher and his/her spouse, the provisions of this Agreement will only apply to that portion of the residence owned by the Train Dispatcher.

Section 6

(A) Train Dispatchers under the ATDA-SP-E and ATDA-SP-W Agreements who are involved in the transition to the new, Denver dispatching center, and who therefore perform service at the Denver center in advance of the consolidation, will be allowed expenses sufficient to cover their travel costs and reasonable living expenses. Payment for lodging in Denver will be paid through direct billing to the company.

(B) During the period of time the Company requires a Train Dispatcher covered by the ATDA-SP-E or ATDA-SP-W Agreements to remain in his/her former office, after the Train Dispatcher has vacated his/her former residence and established a permanent residence in Denver, the Train Dispatcher will be allowed reinbursement for his/her own reasonable out-of-pocket expenses.

(C) If the intended move by a Dispatcher covered by the ATDA-SP-E or ATDA-SP-W Agreements to the new, Denver dispatching center is not made on the designated date, after the Dispatcher and/or his or her dependents have vacated their residence or commenced moving, the Company shall provide suitable lodging and reasonable and necessary expenses for the individual Train Dispatcher and his or her dependents. It is understood by all parties that reasonable delays may take place, beyond the control of the Company and/or the Dispatcher, and that dates for intended relocations may change after residences have been vacated. Expenses shall continue to be paid by the company on a day to day basis, for a reasonable period of time, until the employee is released to proceed to his or her new location in Denver.

(D) It is understood that the transfer date for Dispatchers covered by the ATDA-SP-E and ATDA-SP-W Agreements may be subject to change or may be different for each individual Dispatcher. Such date may be extended without penalty to the Company provided the Dispatcher in question has not formalized arrangements to vacate residence or has not commenced moving.

Section 7

A Train Dispatcher working for the SPL shall cease to be protected by this Implementing Agreement in case of his or her disability, resignation, death, dismissal for cause in accordance with current applicable rules, or currently applicable or future applicable collective bargaining agreement(s), or failure to accept employment in another craft, or failure to accept employment as provided in the currently applicable or future collective bargaining agreement(s).

Section 8

This Agreement constitutes an arbitrated Implementing Agreement. Except as specifically modified by this Agreement, all terms and conditions contained in New York Dock Conditions for the protection of Train Dispatchers who are currently covered by the ADTA-SP-E, ATDA-SP-W, and DSC-D&RGW Agreements, are incorporated herein and shall apply to all Train Dispatchers who become adversely affected as result of the consolidation of SPL's train dispatching offices to the new, Denver dispatching center.

Section 9

The provisions of this Implementing Agreement address a specific and unique situation. Its provisions shall not serve as precedent in the future by any party.

Section 10

All provisions contained in this Implementing Agreement shall be retroactive to April 1, 1994.

Denver, Colorado

Dated: May 25, 1994

ATDA EXHIBIT 18

DECLARATION OF DAVID VOLZ

I, David Volz, declare the following is true and correct to the best of my personal knowledge:

1. I am a Vice President of the American Train Dispatchers Association. I am the officer of the ATDA who was directly responsible for coordinating the bargaining with CN/IC for an implementing agreement to address the transaction identified in the Carrier's February 3, 2009 *New York Dock* notice to the union.

2. In its Pre-Hearing Submission to the arbitrator, the Carrier presented a description of the events following service of its *New York Dock* notice that is in many ways inaccurate and incomplete. For example, the Carrier has submitted only some of the email correspondence between the parties. The missing emails, dated March 23, April 13, April 29, May 4, and August 31, 2009 are attached hereto as Attachment A.

3. The Carrier also ignores many of the phone conversations that occurred between Senior Manager-Labor Relations Cathy Cortez, the Carrier's representative responsible for the implementing agreement negotiations, and me. Anyone reviewing the Carrier's Submission would have no idea that I spoke with or left messages for Ms. Cortez on numerous occasions by phone. I talked with her about the implementing agreement on March 27, April 21, June 23, twice on June 26, July 13, July 23, and August 4, 2009. I left a message for her on June 29, when she was on vacation. There were three other phone calls she never returned. I returned all of her calls promptly.

4. When discussing the ATDA's unavailability in February and March on page 4 of its Submission, the Carrier does not acknowledge the fact that it did not have a proposal ready to present to ATDA until April 15, 2009. The Carrier says it "circulated a draft implementing agreement...shortly in advance of the meeting" on April 15, 2009. That is quite an overstatement. Ms. Cortez did not "circulate" the proposed implementing agreement until ATDA President Leo McCann and General Chairman Joe Mason showed up for the April 15

bargaining meeting. This is evidenced by Cortez's notation at the top of the Carrier's proposal (CN/IC Exhibit 8) "Carrier Proposal 4/15/09." Then, the parties had to recess the meeting until after lunch to give ATDA's representatives an opportunity to look it over. It hardly would have accomplished anything to meet with Cortez in February or March because the Carrier had yet to prepare its proposal.

5. One of the emails the Carrier failed to include in its Submission is dated March 23, 2009 from me to Ms. Cortez. I asked her whether she wanted to confirm the April 15 and 16 meeting dates or whether she needed more time to complete the proposal.

6. At page 4 of its Submission, the Carrier says "During the April 15, 2009 meeting, the Carrier and the ATDA tentatively planned to conduct another bargaining session in early June." This interval of time was agreed to by the Carrier; its current criticism about the length of the interval certainly is unwarranted. When I agreed to a tentative date during the week of June 1, I had overlooked the fact that President McCann was unavailable due to a Public Law Board commitment that week; once I realized this oversight, I so advised the Carrier on April 22, 2009.

7. At the conclusion of the April 15 meeting, General Chairman Mason approached Hunt Carey, the Carrier manager who oversees train dispatching, about the company reconsidering its position concerning putting the GTW dispatchers under the IC Agreement. Carey said he'd consider that, but he never got back to Mason on the issue.

8. The parties next met via teleconference on June 16, 2009. During that conference call, ATDA asked Ms. Cortez where the company stood on the IC agreement coverage issue, reminding her about Mason's conversation with Carey. She said she wasn't aware of this conversation and would talk to Carey to see if they were interested in revising their proposal and would let us know. We told her that if the carrier was not going to revise its proposal, the ATDA would prepare a counter proposal, which we did and presented to the company on July 25, 2009, via email.

8. The parties next met via teleconference on June 16, 2009. During that conference call, ATDA asked Ms. Cortez where the company stood on the IC agreement coverage issue, reminding her about Mason's conversation with Carey. She said she wasn't aware of this conversation and would talk to Carey to see if they were interested in revising their proposal and would let us know. We told her that if the carrier was not going to revise its proposal, the ATDA would prepare a counter proposal, which we did and presented to the company on July 25, 2009, via email.

9. The Carrier accuses the ATDA of causing all of the delay, but Cortez's own email establishes that that is not correct. In her August 3, 2009, email to me (CN/IC Exhibit 20), Cortez states "I'm well aware that scheduling can be difficult, what with other bargaining, vacations, arbitration, family issues and travel restrictions. We have experienced all of those issues from our side of the table as well." Not surprisingly, the Carrier doesn't acknowledge this admission in its submission. There was no "pattern of delay" on the part of the Union. The process took as long as it did because both sides had conflicts that affected scheduling of bargaining sessions.

10. In its Submission the Carrier frequently repeats the mantra that it, and only it, wanted to reach a voluntary agreement instead of going to arbitration. However, when I presented ATDA's final proposal to Ms. Cortez on August 31 via email, I told her that we too were willing to have further discussions in the hope of reaching a voluntary agreement. She never responded to this invitation.

11. Ultimately, the Carrier presented only one serious proposal. When ATDA countered with a proposal that reflected the interests of the affected employees, CN/IC responded

not by bargaining but by rejection without comment, invoking arbitration, withdrawing its previous offer, and totally regressing on every issue to which ATDA had countered. This hardly constitutes a good faith attempt to arrive at a voluntary agreement. For the Carrier now to complain that ATDA did not budge in response to the Carrier's behavior is disingenuous, to say the least.

David Volz

David Volz

Dated: December 3, 2009

ATTACHMENT A

Subj: **GTW NYD Negotiations**
Date: 3/23/2009 9:37:12 A.M. Central Daylight Time
From: Atdddwv
To: Cathy.Cortez@cn.ca
CC: ATDAMCCANN, atdaclb@yahoo.com, josephwmason1@juno.com

Cathy:

It is my understanding that the dates of April 15 and 16 are tentatively scheduled for the NYD negotiations involving the GTW dispatchers. Do you wish to confirm these dates? Or, do you need additional time to complete the proposal you have been working on?

David W. Volz
Vice President
American Train Dispatchers Association
Phone: 210-455-9294
Fax: 210-467-5239

This email and any attached files may contain confidential and/or privileged information, and is intended only for the individual(s) named above. If you are not the intended recipient(s), you are advised that any dissemination or disclosure of the contents of this communication is strictly prohibited; please immediately notify the sender and delete this email from your system.

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!

Subj: **Re: 4/15 Meeting**
Date: 4/13/2009 6:23:58 P.M. Central Daylight Time
From: Cathy.Cortez@cn.ca
To: atdddwv@aol.com

Works fine for us.

From: Atdddwv
Sent: 13/04/2009 06:04 PM EDT
To: Cathy Cortez
Cc: ATDAMCCANN@aol.com; josephwmason1@juno.com
Subject: 4/15 Meeting

Cathy:

We'd like to start the meeting at 10am on the 15th. Leo is flying in that morning and arrives Midway at 830am. This will give him time to make it to your offices. Thanks.

David W. Volz
Vice President
American Train Dispatchers Association
Phone: 210-455-9294
Fax: 210-467-5239

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The Average US Credit Score is 692. See Yours in Just 2 Easy Steps!

Subj: **Re: GTW NYD Negotiations**
Date: 5/4/2009 4:27:49 P.M. Central Daylight Time
From: Cathy.Cortez@cn.ca
To: Atdddwv@aol.com
CC: ATDAMCCANN@aol.com, Hunt.Cary@cn.ca, josephwmason1@juno.com

David -

Please let me know. I will try to contact you later in the week. We're not looking at an all-day call, just something to gauge where we are in the process.

Thanks.

Cathy Cortez
Senior Manager – Labor Relations
Office: 708.332.3570
Mobile: 312.848.0586

Atdddwv@aol.com

04/29/2009 10:21 PM

To Cathy.Cortez@cn.ca

cc ATDAMCCANN@aol.com, josephwmason1@juno.com, Hunt.Cary@cn.ca

Subject Re: GTW NYD Negotiations

Cathy:

I've been tied up in negotiations this week. Our schedules are packed and I'm still searching for a date when we're all available.

In the meantime, what's the status of the agreement regarding the bonuses for the WC dispatchers?

David

In a message dated 4/22/2009 12:29:15 P.M. Central Daylight Time, Cathy.Cortez@cn.ca writes:

David -

Seeing as we're unable to schedule something face-to-face, we'd like to set up a conference call to move forward. What is your availability?

Thanks

Cathy Cortez
Senior Manager – Labor Relations
Office: 708.332.3570

Subj: **Re: Fw: Implementing Agreement**
Date: 8/31/2009 4:24:39 P.M. Central Daylight Time
From: Atdddwv
To: Cathy.Cortez@cn.ca, ATDAMCCANN, Joseph.Mason@cn.ca, Mike.Christofore@cn.ca, John.Czarny@cn.ca
CC: Timothy.Rice@cn.ca, ROGER.MACDOUGALL@cn.ca, Hunt.Cary@cn.ca
BCC: mwolly@zwerdling.com

Cathy:

Please find attached our counter proposal to your final proposal. We, too, are willing to discuss this further in the hopes of reaching a voluntary agreement. Please advise.

David

In a message dated 8/27/2009 5:40:42 P.M. Central Daylight Time, Cathy.Cortez@cn.ca writes:

> Further to my email of last night, here is an updated version. The previous one contained some typos.
>
> ---
>
> **From:** "aol" [jcortez130@aol.com]
> **Sent:** 27/08/2009 02:43 PM EST
> **To:** Cathy Cortez
> **Subject:** Implementing Agreement

David W. Volz
Vice President
American Train Dispatchers Association
Phone: 210-455-9294
Fax: 210-467-5239

This email and any attached files may contain confidential and/or privileged information, and is intended only for the individual(s) named above. If you are not the intended recipient (s), you are advised that any dissemination or disclosure of the contents of this communication is strictly prohibited; please immediately notify the sender and delete this email from your system.

BEFORE AN ARBITRATOR ACTING PURSUANT TO THE NEW YORK DOCK CONDITIONS ARTICLE I, SECTION 4

Don A. Hampton, Arbitrator

In the Matter of:

SURFACE TRANSPORTATION BOARD Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY, GRAND TRUNK CORPORATION, GRAND TRUNK WESTERN RAILROAD COMPANY INCORPORATED – CONTROL – ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, etc.

Dispute Over Transfer of Train Dispatching Work

POST-HEARING REPLY BRIEF OF THE AMERICAN TRAIN DISPATCHERS ASSOCIATION AND ATDA EXHIBIT 19

Michael S. Wolly
ZWERDLING, PAUL, KAHN & WOLLY, P.C.
1025 Connecticut Avenue NW
Suite 712
Washington, D.C. 20036
(202) 857-5000

Attorney for ATDA

POST-HEARING REPLY BRIEF OF THE AMERICAN TRAIN DISPATCHERS ASSOCIATION

Introduction

The American Train Dispatchers Association ("ATDA") will not use the opportunity for a reply to simply repeat arguments already made. Rather, we will briefly address those points CN/IC includes in its Post-Hearing Submission.

CN/IC Has Not Justified An Immediate Override of the GTW-ATDA Agreement.

The Carrier goes to great lengths to explain why it considers a single seniority roster and a single collective bargaining agreement – the IC-ICTDA agreement – necessary to implementing the transaction. What it fails to explain is why that change is necessary *before* it is ready to operate the GTW and IC systems as one. As long as separate system operations continue, there simply is no valid foundation for the Carrier's position that eliminating the GTW roster and agreement is necessary for the effectuation of the transaction. It will achieve all of the other efficiencies it seeks (less rent, fewer management personnel, fewer information technology support requirements) simply by closing the Troy dispatching operation and moving the GTW dispatchers to Homewood. The other efficiencies it says it will gain by combining the workforces and assignments will only occur when the uniform dispatching equipment and rules are in place – and that will be on some unspecified date in the future. As ATDA has explained earlier, only when that happens does a single agreement/single roster become "necessary."

The Carrier's Post-Hearing Submission also exposes the harshness of CN/IC's proposal to only grant prior rights to "positions." That is because the Carrier apparently intends one day to abolish the positions it is creating for the GTW dispatchers at Homewood that cover what it calls "Chicagoland" and then create new ones that overlap territories of former properties. CN/IC Post-Hearing Submission, p. 9. But that change would not affect all of the territories GTW dispatchers cover. There is no reason why prior rights to work other territories cannot be preserved even when that change happens. That is why we propose that prior rights to work all former territories can and should be preserved; if there is any dispute as to whether those rights

extend to a particular position, if the predominant part of the job's responsibilities covers GTW territory, then it should be a prior rights position; if not, it could be open to all qualified dispatchers in the office.[1]

CN/IC's only response to our proposal that those GTW dispatchers remaining in Troy retain the right to bid vacancies that occur in Homewood is that assignments will change at Homewood such that the dispatchers left behind initially will not be familiar with all of the territory they may be called upon to cover after the consolidation. That, of course, overlooks the fact that any dispatcher, former GTW or IC has to be trained on territory and equipment with which he may be unfamiliar. The fact that the six dispatchers who are not part of the initial move would have to undergo such training later in time is not a legitimate basis for denying them the opportunity to follow their work when a later vacancy occurs.

The Carrier argues that the "controlling carrier" concept be applied to eliminate the GTW-ATDA agreement. But the cases upon which it relies all dealt with a significant commingling of work such that prior working lines can no longer be distinguished. That is not happening here, at least beyond "Chicagoland." Those cases therefore are not convincing authority for accepting CN/IC's proposal. *See* ATDA Post-Hearing Brief, p. 5-6. Insofar as dispatching assignments will be merged only for dispatching in the Chicago area, the Carrier should not be permitted to abrogate the GTW-ATDA agreement for other territory or beyond the positions affected by that change.[2] The Carrier Senior Chief - Chicago Division says that once the GTW dispatchers are in the Homewood office, the Carrier "will have the flexibility to

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[1] This same test should be used to determine whether the predominant part of a job's responsibilities covers IC territory such that it should be considered part of an ICTDA-represented dispatcher's prior rights.

[2] This is what happened in *Burlington Northern Santa Fe Railway Company and Brotherhood of Maintenance of Way Employes*, F.D. No. 32549 (Sickles, March 25, 1999) (ATDA Exhibit 14), p. 32 ("The Carrier has failed to demonstrate that all headquartered employees in the consolidated zones must work under a single CBA.... BMWE's proposal that all headquartered employees in Amarillo, Chicago, Fort Worth, Galesburg, Kansas City, and Oklahoma City would continue to work under their respective CBAs shall be adopted.").

reorganize the geographic scope of existing 'desks,' or teams of dispatchers assigned to dispatch trains over a particular geographic area." Frasure Declaration ¶ 7. What he does not say is that that reorganization is imminent. He does not say when the equipment necessary to accomplish such a dramatic change will be available. (When it was before the STB, the Carrier said that the GTW and IC train dispatching systems were not compatible and that a combined operating rules practices book would have to be produced when new equipment becomes available. CN/IC Ex. 1, p. 135; *see* ATDA Post-Hearing Brief at 3-4). A single CBA would only be necessary when it becomes possible to place all of the territories under the control of the same dispatching system. The timing of that future event is something about which the Carrier is notably silent.

The Carrier's suggestion that the 1999 agreement with ATDA to maintain the Troy dispatching office for six years was in some way a concession that after the passage of that time, the Carrier possessed free rein to proceed as it wanted is absurd. CN/IC Post-Hearing Submission at 8. Whatever the Carrier's motivation for entering into that Side Letter (CN/IC Ex. K), it certainly did not gain an override of the conditions the STB placed on the transaction itself. Had the Letter Agreement had that effect, why would CN/IC ever served its February 2009 *New York Dock* notice? Moreover, as is evident from ATDA's previous filings and position at the hearing, this dispute is not over whether all train dispatching may be transferred to Homewood; ATDA concedes that the Carrier may do that. What is in dispute is the conditions under which that transfer may occur. Under established STB precedent which both sides have acknowledged, authority to override CBAs in connection with the transfer only is available when that override is necessary to achieve the purposes of the transaction. Necessity must be shown in actuality, not by speculation. We submit that timing is part of proving necessity, and CN/IC has not demonstrated that abolishing the GTW-ATDA *now* is necessary to the transfer the Carrier *now* is contemplating.[3] The arbitrator certainly has the authority to delay when, if ever, that CBA

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[3] Even when the time comes that uniform equipment is available and the employees are cross-trained, the Carrier only intends to use employees experienced on one carrier's system to (continued...)

override should be permitted.

ATDA's Protective Benefit Proposals Withstand CN/IC's Criticism

CN/IC does not argue adopting ATDA's proposals for spousal employment assistance, a fair house-hunting allowance, and a lump sum relocation alternative will interfere with the Carrier's ability to achieve the efficiencies of the transaction. Nor does it allege those proposals are unreasonable. It says instead that while it might have been willing to agree to these items initially, the arbitrator should penalize the employees because ATDA purportedly "dragged-out the process." We have already shown that the onus of blame for the time it took to reach arbitration must be shared. Moreover, it is not unusual for implementing agreements not to be concluded with 90 days of service of a *NYD* notice. So, CN/IC simply says "you can't do it." We submit that the precedent we have presented supports the opposite conclusion.

The Carrier takes issue with ATDA's position that a 10% pay rate increase is warranted to soften the blow of the dramatically higher cost of living in Homewood than in the areas where the GTW dispatchers currently reside. We have already demonstrated that inclusion of such a provision in the implementing agreement is consistent with the protective principles underlying *New York Dock*. But CN/IC faults the union's factual justification because only two of the dispatchers live in Pontiac, the locale we used as the basis for our cost of living comparison. (Although it clearly has the information, the Carrier doesn't say where else they currently live.) Our further examination reveals that the Carrier is correct about Pontiac, but also that the proposal is warranted in any event. Here is where all of the 16 GTW dispatchers reside and,

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[3](...continued)
dispatch over another's "in the event of storms, derailments, labor disputes affecting other carriers, or other unanticipated circumstances." CN/IC Post-Hearing Submission, p. 11.

CN/IC's additional suggestion (Post-Hearing Submission at 12-13) that *NYD* would not apply if the Carrier only wanted to relocate GTW work onto IC territory is certainly wrong. Absent ICC/STB approval, the Carrier would have possessed no right to commingle any employees across system lines; because it needed ICC approval to consummate the IC-GTW merger, it also became obliged to have a *NYD* implementing agreement in hand before it took such an action which obviously would have an effect on both the GTW and the IC employees.

based on the data reported at www.bestplaces.net, a comparison showing the effect the move would have on each of their respective standards of living:

Employee	Residence	Current Pay	% Difference	Homewood
Gebard	Pontiac	$ 75,176	27%[4]	$ 95,780
Campbell	Pontiac	$ 75,176	27%	$ 95,780
Facknitz	Holly	$ 75,176	11%	$ 83,249
Wery	Holly	$ 75,176	11%	$ 83,249
Mason	Waterford	$ 75,176	13%	$ 84,614
Maidment	Fenton	$ 75,176	4%	$ 78,557
White	Durand	$ 75,176	26%	$ 94,395
Martenis	Durand	$ 75,176	26%	$ 94,395
McDonough	Durand	$ 75,176	26%	$ 94,395
Spring	Durand	$ 75,176	26%	$ 94,395
Schott	Port Huron	$ 75,176	22%	$ 91,590
Maier	New Boston[5]	$ 75,176	15%	$ 86,595
Cowgar	Pinckney	$ 75,176	3%	$ 77,521
Pollard	Birmingham	$ 75,176	(21%)	$ 59,313
Evans	Redford	$ 75,176	19%	$ 89,520
Plumley	Lapeer	$ 75,176	11%	$ 83,336
AVERAGE			**15.38%**	**$ 86,668**

See ATDA Ex. 19 attached. Only one dispatcher lives in a place where the move would put him in a less-costly environment. Thus, even using this revised data, ATDA's proposal presents a reasonable adjustment to address the impact of the transfer to Homewood. As we noted in our opening Submission, such adjustments are consistent with what regularly occurs when industrial companies move their employees from one place to another. CN/IC's protestation notwithstanding, this will not even fully protect them from the effects of the move. Their comparative financial standing will deteriorate as a result of the move; ATDA's proposal will only partially offset that deterioration. They certainly will not be better off financially.

With absolutely no support whatsoever, the Carrier says that GTW dispatchers "on balance will earn the same or more ***after*** they are consolidated with the IC dispatchers and working under the ICTDA agreement." CN/IC Post-Hearing Submission at 14 (emphasis in

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[4] The data for Pontiac has changed since ATDA's initial filing.

[5] The closest town for measurement is Romulus, MI.

original). We remind the Arbitrator that IC dispatchers currently are paid less than GTW dispatchers and are working under an agreement that cannot be changed until 2014, at the earliest.

CONCLUSION

For the reasons shown in this Reply Brief and ATDA's previous filings, the Union submits that under the standards set by the STB and the *New York Dock* Conditions, this transaction should proceed on the terms contained in ATDA's proposed implementing agreement. The Carrier's contrary proposal that the ATDA collective bargaining agreement be eliminated, the GTW dispatchers who do not move to Homewood forever lose their rights as train dispatchers, and that the very minimum level of protective benefits be provided, is simply not supported by the record before the arbitrator.

Respectfully submitted,

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ATDA EXHIBIT 19

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Cost of Living Comparison: Pontiac, Michigan - Homewood, Illinois

Change cities

A salary of **$75,176** in Pontiac, Michigan should increase to **$95,780** in Homewood, Illinois

Pontiac
U.S. Avg
Homewood

Cost of Living Indexes	Pontiac	Homewood
Overall	74	95
Food	106	105
Housing	28	69
Utilities	88	105
Transportation	104	119
Health	113	116
Miscellaneous	96	107

100 = National average

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Homewood is **27%** more expensive than Pontiac.

Housing is the biggest factor in the cost of living difference

Housing is **150%** more expensive in Homewood.

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Cost of Living Comparison: Holly township, Michigan - Homewood, Illinois

Change cities

A salary of **$75,176** in Holly township, Michigan should increase to **$83,249** in Homewood, Illinois

Holly township
U.S. Avg
Homewood

Cost of Living Indexes	Holly township	Homewood
Overall	86	95
Food	107	105
Housing	58	69
Utilities	88	105
Transportation	104	119
Health	113	116
Miscellaneous	97	107

Homewood is **11%** more expensive than Holly township

Utilities are the biggest factor in the cost of living difference

Utilities are **19%** more expensive in Homewood

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Cost of Living Comparison: Waterford, Michigan - Homewood, Illinois

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A salary of **$75,176** in Waterford, Michigan should increase to **$84,614** in Homewood, Illinois

Waterford
U.S. Avg
Homewood

Cost of Living Indexes	Waterford	Homewood
Overall	84	95
Food	107	106
Housing	55	69
Utilities	88	108
Transportation	104	119
Health	112	116
Miscellaneous	96	107

100 = national average

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Homewood is
13%
more expensive than Waterford.

Utilities
are the biggest factor in the cost of living difference.

Utilities are
20%
more expensive in Homewood

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Cost of Living Comparison: Fenton, Michigan - Homewood, Illinois

Change cities

A salary of **$75,176** in Fenton, Michigan should increase to **$78,557** in Homewood, Illinois

Fenton
U.S. Avg.
Homewood

Cost of Living Indexes	Fenton	Homewood
Overall	91	95
Food	103	105
Housing	77	69
Utilities	81	105
Transportation	101	119
Health	106	116
Miscellaneous	96	107

100 = National Average

* Compare these cities in over 100 categories

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Homewood is
4%
more expensive than Fenton

Utilities
are the biggest factor in the cost of living difference.

Utilities are
30%
more expensive in Homewood

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Cost of Living Comparison: Durand, Michigan - Homewood, Illinois

Change cities

A salary of **$75,176** in Durand, Michigan should increase to **$94,395** in Homewood, Illinois

Durand
U.S. Avg
Homewood

Cost of Living Indexes	Durand	Homewood
Overall	75	95
Food	100	105
Housing	39	69
Utilities	75	105
Transportation	97	119
Health	96	116
Miscellaneous	101	107

100 - [illegible]

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Homewood is **26%** more expensive than Durand.

Housing is the biggest factor in the cost of living difference

Housing is **79%** more expensive in Homewood.

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Cost of Living Comparison: Port Huron, Michigan - Homewood, Illinois

Compare Cities

A salary of **$75,176** in Port Huron, Michigan should increase to **$91,590** in Homewood, Illinois

Port Huron
U.S. Avg.
Homewood

Cost of Living Indexes	Port Huron	Homewood
Overall	78	95
Food	100	105
Housing	35	69
Utilities	89	109
Transportation	105	119
Health	114	116
Miscellaneous	96	107

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Homewood is
22%
more expensive than Port Huron

Housing
is the biggest factor in the cost of living difference

Housing is
94%
more expensive in Homewood.

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Cost of Living Comparison: Romulus, Michigan - Homewood, Illinois

Change cities

A salary of **$75,176** in Romulus, Michigan should increase to **$86,595** in Homewood, Illinois

Romulus
U.S. Avg
Homewood

Cost of Living Indexes	Romulus	Homewood
Overall	82	95
Food	107	105
Housing	45	69
Utilities	105	109
Transportation	103	119
Health	110	116
Miscellaneous	98	107

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Homewood is
15%
more expensive
than Romulus

Housing
is the biggest factor in the cost of living difference.

Housing is
54%
more expensive in Homewood

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Cost of Living Comparison: Pinckney, Michigan - Homewood, Illinois

Change cities

A salary of **$75,176** in Pinckney, Michigan should increase to **$77,521** in Homewood, Illinois

Pinckney
U.S. Avg
Homewood

Cost of Living Indexes	Pinckney	Homewood
Overall	92	95
Food	104	109
Housing	79	69
Utilities	82	105
Transportation	101	119
Health	105	116
Miscellaneous	99	107

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Homewood is **3%** more expensive than Pinckney

Utilities are the biggest factor in the cost of living difference.

Utilities are **28%** more expensive in Homewood

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Cost of Living Comparison: Birmingham, Michigan - Homewood, Illinois

Change cities

A salary of **$75,176** in Birmingham, Michigan could decrease to **$59,313** in Homewood, Illinois

Birmingham
U.S. Avg
Homewood

Cost of Living Indexes	Birmingham	Homewood
Overall	120	95
Food	108	105
Housing	154	69
Utilities	89	105
Transportation	104	119
Health	113	116
Miscellaneous	95	107

105 = national average

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Homewood is **21%** cheaper than Birmingham

Housing is the biggest factor in the cost of living difference

Housing is **55%** cheaper in Homewood.

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Cost of Living Comparison: Redford, Michigan - Homewood, Illinois

A salary of **$75,176** in Redford, Michigan should increase to **$89,520** in Homewood, Illinois

Redford
U.S. Avg
Homewood

Cost of Living Indexes	Redford	Homewood
Overall	80	95
Food	109	105
Housing	37	69
Utilities	104	105
Transportation	102	119
Health	110	116
Miscellaneous	99	107

100 = National Average

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Homewood is
19%
more expensive than Redford

Housing
is the biggest factor in the cost of living difference

Housing is
89%
more expensive in Homewood

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Cost of Living Comparison:
Lapeer township, Michigan - Homewood, Illinois

change cities

A salary of **$75,176** in Lapeer township, Michigan should increase to **$83,336** in Homewood, Illinois

Lapeer township
U.S. Avg.
Homewood

Cost of Living Indexes	Lapeer township	Homewood
Overall	85	95
Food	106	105
Housing	57	69
Utilities	88	105
Transportation	108	119
Health	116	116
Miscellaneous	97	107

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Homewood is
11%
more expensive than Lapeer township

Utilities
are the biggest factor in the cost of living difference

Utilities are
19%
more expensive in Homewood

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