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Public Record

BEFORE THE SURFACE TRANSPORTATION BOARD

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Finance Docket No. 33556, Sub No. 6

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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VERIFIED PETITION OF THE  
AMERICAN TRAIN DISPATCHERS ASSOCIATION  
TO ENFORCE COMPLIANCE WITH THE BOARD'S SEPTEMBER 29, 2011 ORDER

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The American Train Dispatchers Association ("ATDA") petitions the Board to require Canadian National Railway Co. ("CN"), Grand Trunk Corp., Grand Trunk Western R.R. Co. ("GTW"), Illinois Central Corp., Illinois Central R.R. Co. ("IC"), Chicago, Central & Pacific R.R. Co., and Cedar River R.R. Co. (collectively "the Carrier") to comply with the Board's Order dated September 29, 2011, to resolve the parties' differences over disposition of the Carrier's February 2009 *New York Dock* Article I, Section 4 Notice by negotiating an implementing agreement to govern the transfer of GTW train dispatching and the GTW train dispatchers responsible for doing it from Troy, MI, to Homewood, IL. This Petition is filed pursuant to Part 1117.1 of the Board's Rules. 49 CFR § 1117.1. The Board has jurisdiction because the relief sought is to an order enforcing an earlier decision of the Board

In support of this Petition, ATDA shows as follows:

**Background**<sup>1</sup>

ATDA is the exclusive collective bargaining representative for the employees of both the GTW and Wisconsin Central Railroad ("WC"), another CN subsidiary, in the craft or class of train dispatchers. The GTW dispatchers work at Troy, MI; the WC dispatchers are at Homewood, IL. The train dispatchers employed on the former IC are represented by the Illinois Central Train Dispatchers Association ("ICTDA"), which is not affiliated with ATDA. They

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<sup>1</sup> These basic facts are set forth in greater detail in the Reply ATDA filed in this proceeding on April 19, 2010, to the Carriers' Petition for Review of an Arbitration Award and in the Board's Decision and Order of September 29, 2011.

also work at Homewood. There are collective bargaining agreements in place between ATDA and GTW and between ICTDA and IC. ATDA and WC are in the process of negotiating an initial CBA.

On February 3, 2009, CN served notice on ATDA pursuant to Article I, Section 4 of the *New York Dock* Conditions of its intent to transfer train dispatching operations over the GTW territory by train dispatchers represented by ATDA at Troy, MI, to Homewood, IL. After the parties were unable to arrive at an implementing agreement via direct negotiations, the dispute was submitted to arbitrator Don Hampton for resolution. Arbitrator Hampton issued an award on February 1, 2010, which the Carriers petitioned the Board to set aside. On September 29, 2011, the Board issued its decision on the Carriers' petition, vacating the award in part and directing the parties to engage in further negotiations to arrive at an implementing agreement to address the issues as to which the award was vacated.

Specifically, the Board found that the arbitrator had not applied the correct standard in deciding that the CBA governing the GTW dispatchers should continue to apply to them after their transfer to Homewood and remanded that matter to the parties for further negotiations. The Board observed that "there may be provisions in ATDA's CBA that need not be modified in order for CN to realize the benefits of consolidated dispatching operations" and held that "[t]he extent to which it is necessary to override the CBA should be addressed in further negotiations, or, should negotiations fail, arbitration under the proper standard."

Insofar as protective benefits on which implementation is to be conditioned are concerned, the Board affirmed some of those imposed by the arbitrator and vacated others. The Board held that "providing 4 days with pay for house-hunting trips requires employees to schedule their house hunting trips 'in conjunction with . . . rest days'—days on which they are not scheduled to work" and a "one-time \$500 bonus payment to defray expenses associated with employees' house-hunting trips" both were permissible under *New York Dock*, but the optional relocation payments and "mandate [of] at least 6 separation allowances and permit[ting]

employees who are not dismissed to obtain such allowances” included by the arbitrator were not.

This was the Board’s substantive conclusion:

Because the Hampton Award uses the wrong legal standard, makes a significant factual error, and grants benefits to employees that exceed New York Dock, we vacate the Award in part and remand this matter to the parties for further negotiation in accordance with this decision, and, in the event the parties cannot reach settlement, to arbitration for further action consistent with our opinion.

This is the relevant part of the Board’s Order: “The Hampton Award is affirmed in part and vacated in part, and the proceeding is remanded for further action consistent with this decision.”

Since the Board’s Order, the Carrier has refused to bargain further over its 2009 notice. Even after ATDA representatives traveled to Homewood for mutually scheduled negotiations over CN’s 2009 notice on November 16, 2011, CN abruptly canceled those negotiations and subsequently served its “new” notice. Consequently, the parties have not arrived at an implementing agreement in compliance with the Board’s direction. The GTW train dispatchers continue to control GTW territory out of Troy, MI, and remain uncertain as to the conditions under which they will transfer.

#### **The Current Dispute**

On November 28, 2011, CN served what it termed “a new Section 4 notice.” Exhibit A hereto. That notice states that the Carrier intends “to consolidate the train dispatching operations of the GTW, the IC *and the WC* into one location” and that “[t]he planned consolidation will require all active GTW RTCs (currently 15) to relocate to Homewood, IL, and *for all three groups* to become integrated under one single collective bargaining agreement.” Emphasis added.

By serving this latest Notice, the Carrier apparently hopes to sidestep its obligations under the Board’s Order and avoid the protective conditions in the Hampton award that this Board found to be consistent with *New York Dock*. The Carrier’s actions would frustrate the process directed by the Board. The implementing agreement bargaining/arbitration contemplated by the Board to resolve the 2009 notice will not happen. The GTW employees will lose the favorable

provisions of the Hampton award that survived the Board's review. The Carrier should be required to exhaust the procedures as to the integration it originally proposed, as the Board's Order directed. The Board should not permit the Carrier to move ahead with the "new" notice until it has completed the handling of the prior notice.

Evidence of the Carrier's attempt to sidestep the Board's direction is contained in the proposed implementing agreement it sent to the ATDA involving its "new Section 4 notice." (Exhibit B). In it the Carrier proposes to once again place the GTW train dispatchers under the ICTDA CBA, but this time it also wants to force the WC train dispatchers under that Agreement as well. This is nothing more than the Carrier attempting another bite at the apple that it did not get in the Board's September 29, 2011 Decision.

In that Decision, the Board stated:

In finding that Arbitrator's standard inconsistent with the settled standard for overriding CBA terms, we do not hold that an override of ATDA's entire CBA (or any specific part of it) is necessary. While it is true that the Board approved the CN/IC merger with the understanding that CN intended, among other things, to centralize dispatching functions at Homewood, the Board stated explicitly that its approval of the merger should not be taken to mean that any particular CBA changes would be required.

Further, the Board noted in its CN/IC Merger Decision that, "CN itself acknowledged that, due to the end-to-end nature of the merger, implementation would require at the most only modest adjustments to existing CBAs." Yet in both of its Notices, CN proposes just the opposite.

#### **The Relief Sought**

ATDA requests that the Board enter an Order (a) requiring the Carriers to comply with the Board's September 29, 2011 Order and resume efforts to negotiate an implementing agreement to cover the transfer of GTW train dispatching to Homewood, IL, as contemplated by the Carriers' February 2009 notice, and (b) staying the processing of the Carrier's 2011 notice until after an agreement concluding the February 2009 notice is achieved via bargaining or arbitration.

**Conclusion**

For the reasons set forth above, the relief sought by ATDA is appropriate because the Carrier is acting in derogation of the Board's Order. ATDA's Petition should be granted.

Respectfully submitted,

/s/ Michael S. Wolly  
Michael S. Wolly  
Zwerdling, Paul, Kahn & Wolly, P.C.  
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Attorneys for ATDA

**VERIFICATION**

I, David Volz, Vice President of the American Train Dispatchers Association, verify under penalty of perjury that the factual statements contained in the attached Petition are true and correct to the best of my personal knowledge.

  
\_\_\_\_\_  
David Volz

Dated: December 9, 2011

**CERTIFICATE OF SERVICE**

This is to certify that a copy of this Verified Petition has been served upon counsel for the Carrier and counsel for the ICTDA by electronic mail and by first class mail, postage prepaid, this 9<sup>th</sup> day of December 2011.

/s/ Michael S. Wolly  
Michael S. Wolly

# EXHIBIT A

GRAND TRUNK WESTERN RAILROAD COMPANY  
ILLINOIS CENTRAL RAILROAD COMPANY  
WISCONSIN CENTRAL LTD.

Notice to Employees

November 22, 2011

The Surface Transportation Board, in Decisions dated May 25, 1999 and September 5, 2001, 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); and of the Wisconsin Central Ltd. ("WC") (Finance Docket 34000), 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).

The acquisitions enable the rail systems to provide more efficient, more reliable, and more competitive rail service to the shippers. 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 these transactions, it is necessary to consolidate the train dispatching operations of the GTW, the IC and the WC into one location. The consolidation is not anticipated to result in the immediate abolishment of any rail traffic controller (RTC) positions. The aggregate number of positions may be reduced over time due to the increases in efficiencies. The Carrier anticipates those reductions can be made through attrition of the workforce. The reason for the consolidation is to provide increased operating efficiency and better utilization of the RTCs in a central location at Homewood, Illinois, resulting in streamlined processes in the dispatching and monitoring of train movements across the combined properties, resulting in improved customer service. The planned consolidation will require all active GTW RTCs (currently 15) to relocate to Homewood, IL and for all three groups to become integrated under one single collective bargaining agreement. These changes will affect all RTCs represented by the American Train Dispatchers Association ("ATDA") and the Illinois Central Train Dispatchers Association ("ICTDA").

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

# EXHIBIT B

**Agreement between**

**GRAND TRUNK WESTERN RAILROAD COMPANY  
ILLINOIS CENTRAL RAILROAD COMPANY  
WISCONSIN CENTRAL LTD.**

**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), and April 9, 2004, (Finance Docket No. 34424), 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”) and the Wisconsin Central Transportation Corporation (“WC”), 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 November 22, 2011, the GTW, IC and WC served notice under Article I, Section 4 of the New York Dock protective conditions of its intent to change operations as a result of the above transactions, and

WHEREAS, the parties to this agreement agree that this Implementing Agreement, made by and between the GTW, IC and WC and the American Train Dispatchers Association (“ATDA”) and the Illinois Central Train Dispatchers Association (“ICTDA”) on behalf of employees represented by each respective organization, establishes procedures for selection and

assignment of forces with respect to the consolidated dispatching function at Homewood and provides the necessary protection of affected employees,

**IT IS AGREED:**

1. On the effective date of this agreement, all prior agreements covering wages, rules and working conditions in effect between the ATDA and GTW are dissolved.
2. On the effective date of this agreement, all GTW and WC Dispatcher positions, identified in Attachments B and C, will be abolished and all GTW Dispatchers working under the collective bargaining agreement in effect between the ATDA and GTW and WC Dispatchers working under WC policies and terms and conditions of employment will be subject to the agreement in effect between the IC and ICTDA covering wages, rules and working conditions, subject to the modifications contained herein.
3. No less than ten (10) days prior to the effective date of this agreement, Notices will be posted at Troy and Homewood identifying new IC dispatcher positions to work at Homewood and perform consolidated dispatching work for the formerly-separate GTW, WC and IC dispatching territories.
4. GTW and WC 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 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 furloughed without protection. Assignments and awarding of positions shall be made in seniority order.

5. On the effective date of this Agreement, the employees transferred under Paragraph 4 shall be credited with prior GTW or WC 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 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 or WC service dates 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 GTW and WC dispatchers decline to apply for any of the dispatcher positions at Homewood or if any of the 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 on 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 11 and 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 November 22, 2011. 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 Nos. 33556 and 34000. 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 March 1, 2012.

Signed this <sup>th</sup> day of , 2011 at Homewood, Illinois.

For: GRAND TRUNK WESTERN  
RAILROAD COMPANY;  
ILLINOIS CENTRAL RAILROAD  
COMPANY; WISCONSIN  
CENTRAL, LTD.

For: AMERICAN TRAIN DISPATCHERS  
ASSOCIATION

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Approved: \_\_\_\_\_

**For: ILLINOIS CENTRAL TRAIN  
DISPATCHERS ASSOCIATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Approved: \_\_\_\_\_

## 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 collective 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.

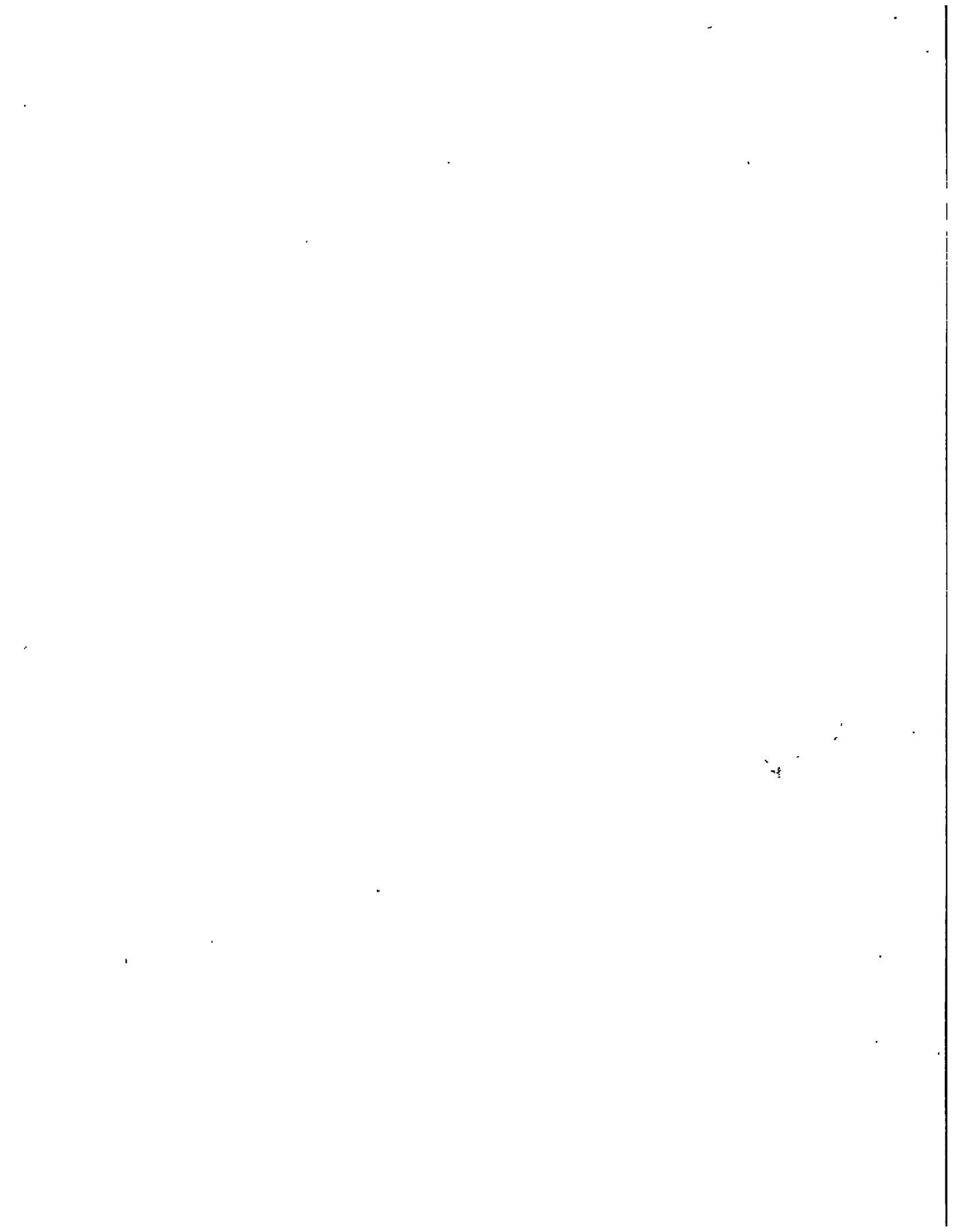
5. Displacement allowances – (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position 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 were 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

- (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 granted 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.

**\*\*\*NOTE\*\*\***

**ROSTERS TO BE ADDED AS ATTACHMENTS AT A LATER DATE.**