

# **MEMORANDUM OF AGREEMENT**

**Between**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY**

**And**

**THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

## **ARTICLE 1.**

### **YARD SERVICE**

Effective January 1, 1996, the standard basic daily rate of pay for yard service for locomotive engineers will be \$161.78 which includes the first general wage increase set forth in Article I -- Wages, Section 1(a) of the core National BLE Agreement and the weight on driver differential is eliminated in yard service.

The January 1, 1996 standard basic daily rate of pay for yard service for locomotive engineers is subject to future general wage increases and cost-of-living adjustments as set forth in the core National BLE Agreement, Article I - Wages, Section 4 and Section 6 and Article II - Cost-of-Living Payments.

## **ARTICLE 2.**

### **ROAD SWITCHER SERVICE**

Effective January 1, 1996, the standard basic daily rate of pay for locomotive engineers in road switcher service will be \$152.63, which includes the first general wage increase set forth in Article I -- Wages, Section 1(a) of the core National BLE Agreement.

The January 1, 1996 standard basic daily rate of pay for locomotive engineers in road switcher service is subject to future general wage increases and cost-of-living adjustments as set forth in the core National BLE Agreement, Article I - Wages, Section 4 and Section 6 and Article II - Cost-of-Living Payments.

## **ARTICLE 3. SPECIAL ENGINEERS' THROUGH FREIGHT ALLOWANCE**

Effective with the implementation of this agreement, each road freight engineer who performs service in unassigned pool freight service and in assigned through freight service (including extra

crew members used for Hours of Service Act relief for this service) will be paid for that trip, in addition to other earnings, a special engineer's through freight allowance of \$16.73 subject to future general wage increases and cost-of-living adjustments.

#### **ARTICLE 4.**

#### **DEADHEADING**

Effective with the implementation of this agreement, Article VI, Section 2(a) of the May 19, 1986 BLE National Agreement is revised to have the effect set forth immediately below.

For each engineer holding seniority in engine or train service prior to November 1, 1985, who deadheads in connection with road service, pay for deadheading as an engineer separate and apart from service shall be a minimum of a basic day at the rate applicable to the class of service in connection with which the deadheading is performed; unless actual time consumed is greater, in which case it will be allowed instead, plus 50 cents per mile for all miles in excess of the basic day.

Note: For example, a pre-November 1, 1985 engineer who deadheads on a district of 200 miles in 10 hours shall be allowed a basic day (currently 130 miles), two hours at straight time for the time in excess of 8 hours (32.5 miles) and 37.5 overmiles at 50 cents per overmile (130 miles + 32.5 miles + 37.5 miles = 200 miles).

#### **ARTICLE 5.**

#### **SPECIAL DISTRICT PAY**

Effective with the implementation of this agreement, each engineer who works a through freight trip as a road freight engineer between the terminals of:

Denver, Colorado and Pueblo, Colorado, or

Bakersfield, California and Barstow, California, or

Los Angeles, California and Barstow, California, or

Las Vegas, New Mexico and Albuquerque, New Mexico, or

Raton, New Mexico and Las Vegas, New Mexico

shall receive for such trip worked, in addition to his other earnings, special district pay of \$10.00.

This \$10.00 payment is subject to future general wage increases and cost-of-living adjustments.

This special district pay is only applicable to a district named in the first paragraph of this Article 5, and is **not** in effect on any other territory.

In addition, each engineer holding seniority in engine or train service prior to November 1, 1985 who works a through freight trip as a road freight engineer east or west bound between the terminals of Bakersfield, California and Barstow, California will continue to be paid eight (8) constructive miles per trip at the October 31, 1985 basic daily rates.

This Article will remain in effect until an interdivisional runthrough (or a similar change in operations due to merger or consolidation with another railroad) on a district covered here is effected. At that time, the payment of constructive miles, as provided for in this Article shall cease and compensation under the terms of such agreement (or arbitration award), shall be based on the engineers' compensation system and level of pay in effect on the affected district as they were immediately prior to the effective date of this Article.

#### **ARTICLE 6.**

#### **RESERVE BOARD**

Effective with the implementation of this agreement, the following changes are made to the June 13, 1990 Engineers' Reserve Board Agreement.

Section (2) is superseded by the following:

An engineer on the reserve board will be allowed 70% of the greater of his actual 1992, 1993, 1994 or 1995 earnings, less extraordinary payments such as moving/relocation options, lump sum payments made under Article I of the BLE 1990 Agreement and other lump sum payments, and payments made under Articles III and IV of the BLE 1990 Agreement, with a minimum of 70% of 5 days at the current yard engineer's rate of pay. Engineers on the reserve board for less than a calendar month will have their reserve pay pro-rated based on the number of full calendar days they are on the board. An engineer who is not on the board a full calendar day will not receive pay for that day.

Section (10)(e) which now reads:

- (e) force the junior post-November 1, 1985 demoted engineer;

is abrogated and replaced with:

- (e) force the senior post-November 1, 1985 demoted engineer.

## **ARTICLE 7.**

## **BEREAVEMENT**

Effective with the implementation of this agreement, Article XI of the January 1, 1990 agreement between the BLE and ATSF is superseded by the following.

Bereavement leave will be allowed in case of the death of an engineer's brother, sister, parent, child, spouse, or spouse's parent; death of a half-brother or half-sister; death of a stepbrother, stepsister, stepparent or stepchild.

NOTE: This rule is also applicable to a family relationship through the legal adoption process.

In such cases, three (3) basic days' pay at the rate of the last service rendered will be allowed anytime during the seven (7) days following the date of death provided the engineer is off on those days. An engineer need not have stood to work on one or more of the days in order to receive bereavement leave pay.

NOTE: Bereavement pay will not be applicable during an engineer's vacation. Also, if an engineer qualifies for holiday pay on a holiday which occurs on a day the engineer also qualified for bereavement leave pay, he will only be entitled to one basic day's pay for that day.

Engineers involved will make provision with their supervisors in the usual manner for taking bereavement leave.

## **ARTICLE 8.**

## **YARD RUNAROUND RULE FORMER EASTERN AND WESTERN LINES (EXCLUDING THE NORTHERN AND SOUTHERN DIVISIONS)**

Effective with the implementation of this agreement, a former Eastern and Western Lines (excluding the Northern and Southern Divisions) engineer who is runaround in the initial terminal will be paid one-third (1/3) of a basic day (subject to general wage increases), provided he and the engineer or engineers that ran around him were in close proximity to such an extent that no off track vehicle conveyance is required to accommodate the exchange of engineers.

Only one yard runaround will be paid to an engineer per start regardless of the number of times he is run around at the initial terminal.

## **ARTICLE 9.**

## **THIRTY (30) DAY BUMP RULE**

Effective with the implementation of this agreement, an engineer who has been permanently assigned on the same engineer assignment in excess of thirty (30) days will be allowed to give up that assignment and exercise his seniority as prescribed by current schedule rules.

Engineers will not be allowed to exercise seniority within the same pool when there is no difference in the assigned days off or layover days.

When an engineer under this article bumps from road service to yard service, he must stay in yard service at that terminal for a minimum of thirty (30) days, seniority permitting.

## **ARTICLE 10.**

## **RULES AND RETRAINING CLASSES**

Effective with the implementation of this agreement, the Operating Department Mandatory Rules Class Agreement dated December 14, 1976 and amended by the September 1, 1989 Agreement and the Retraining Agreement of May 15, 1995 are both superseded by the following.

The Carrier will determine the frequency of rules and retraining classes.

The Carrier representative will schedule engineers' rules and retraining classes not to exceed eight hours each, exclusive of any lunch break.

- a. An engineer will be scheduled to attend the eight hour class(es) on a particular date or dates and must be contacted no later than 10:00 p.m. the day before the class(es) begins.
- b. An engineer will be obligated to attend as scheduled or secure permission to be absent.
- c. An engineer may be scheduled to attend rules and retraining classes on consecutive days.
- d. An engineer will not be required to attend rules or retraining classes during his assigned vacation period.

The allowance for attending rules and/or retraining classes will be \$125.08 for a class day.

- a. The allowance for the class(es) will be used to offset guarantee earned while occupying a guaranteed extra board. Attending the class(es) will not be counted as a layoff from a guaranteed extra board.

- b. An engineer assigned to pool freight or assigned service (including assigned helper pool service) who misses a trip due to attending the class(es) will be paid lost earnings or the class rate, whichever is greater, but in no event will both be paid.
- c. An engineer who attends the class(es) without missing a trip will be paid the training rate.
- d. An engineer who is required to attend class(es) at other than his terminal of assignment, which requires deadheading, will be paid the applicable deadhead rate in addition to the class(es) allowance provided herein, or time lost, whichever is greater.

Engineers required to attend the rules and/or retraining class(es) will be handled as follows:

- a. An engineer, in pool freight at locations where there are active/inactive boards and vacant turns are not normally filled from the extra board will not have his turn removed from the inactive board. Upon completion of the class(es) the engineer will be returned to the inactive board. If his turn is to be activated prior to the time he is available and rested, the turn will be dropped to the foot of the inactive board.
- b. An engineer in pool freight at locations where vacant turns are normally filled from the extra board will not have his turn removed from the board. Upon completion of the class(es) the engineer will be returned to the board. If the turn works to first out before the engineer is rested and available, it will be filled with an extra board engineer. The engineer who attended class(es) will go to the mark-up board until his turn returns to the home terminal.
- c. At locations where there are no active/inactive boards and an engineer normally takes his turn with him, an engineer in pool freight will have his turn removed from the board. Upon completion of the class(es) the engineer will be marked to the foot of the board.
- d. An engineer on an extra board will have his turn removed from the board. Upon completion of the class(es) the engineer will be returned to the foot of the extra board to be called for service after the required rest.
- e. An engineer in assigned helper (pool) service will have his turn removed from the pool. Upon completion of the class(es) the engineer will be marked to the foot of the board.

The following additional provisions apply to an engineer attending a mandatory rules class whether on a single day or in conjunction with a retraining class:

- a. Engineers will be paid as outlined in Section (3) above only for the first attempt. Engineers who fail the first attempt will not be paid for subsequent attempts.
- b. The instruction and review will consist of oral presentation and a multiple choice examination.
- c. Failure to pass the required examination on the first attempt will necessitate a second attempt by the engineer, without pay, within a period not to exceed thirty (30) calendar days from the date of first failure, exclusive of any period he is on formal leave of absence, suspension or vacation. Written notification by the engineer of his availability for the required examination within the period specified herein will be considered as having met the time limit requirements of this Section (c) above.
- d. An engineer who fails to pass the required examination on the second attempt will be suspended from service until he passes the required examination. Subsequent attempts will not be more than sixty (60) calendar days from date of last attempt, even if it is necessary to schedule a special class. A class will be made available to these employees within 15 days following the previous failure.
- e. If an engineer does not comply with the time limits prescribed in this section, he will be considered as having failed the examination.
- f. An engineer, who earlier in the year, was promoted to engineer and underwent an examination on the operating rules will not be subject to this program in the same calendar year. An engineer must, however, undergo, and be credited with, satisfactorily passing an examination for each calendar year for which classes are held.

The Carrier may at its discretion administer the required examinations for locomotive engineer recertification in conjunction with retraining and/or rules classes to engineers who are due for recertification during the calendar year in which the retraining and/or rules class(es) are being held.

## **ARTICLE 11.**

## **EXCLUSIVE REPRESENTATION**

Effective with the implementation of this Agreement, the Brotherhood of Locomotive Engineers shall have the exclusive right to represent every engineer in company level grievance, claim or disciplinary proceedings stemming from that employee's conduct, service or other status as an engineer as follows.

Any one or all of the former grand divisions, Coast Lines, Eastern and Western Lines (excluding Northern and Southern Divisions), or Northern and Southern Divisions, may elect to have exclusive representation.

Election of exclusive representation by a former grand division will be made with thirty (30) days' written notification to the Carrier.

Once a former grand division has elected to have exclusive representation, exclusive representation cannot be canceled without the mutual agreement of the BLE General Committee and the Carrier.

## **ARTICLE 12.**

## **TEMPORARY TRANSFER**

When there is a shortage of locomotive engineers on one seniority district and an excess of locomotive engineers on another seniority district, the Carrier may advertise for locomotive engineers to temporarily transfer from one district to another for a period not to exceed ninety (90) days. Districts with furloughed engineers will be canvassed first; districts with reserve board engineers second.

The Carrier will notify the BLE general chairman prior to posting the temporary transfer notice and outline the details of the transfer. The BLE general chairman will be given a list of names of engineers temporarily transferred.

The temporary transfer notice will be posted for at least 72 hours prior to notifying selected engineers.

Engineers will be selected for temporary transfer in seniority order. Engineers not selected for temporary transfer will be advised as to the reason why.

The Carrier will pay travel and living expenses to temporarily transferred engineers as outlined in the transfer notice.

The Carrier will pay the temporary transfer allowance in addition to all earnings to temporarily transferred engineers as outlined in the transfer notice.

Temporarily transferred engineers will not establish seniority on the new district but will occupy a temporarily established transfer board from which they will be called to fill engineer vacancies when there are no engineers at the source of supply to fill vacancies.



**ARTICLE 13.**      **USING A POST OCTOBER 31, 1985 ENGINEER**  
**IN EMERGENCY SERVICE**

When there is no rested, available engineer working in engine service on a seniority district and it is necessary to use a post October 31, 1985 engineer currently working in ground service as an emergency engineer, the employee so used will be paid the greater of what he earns as an engineer or what he would have earned had he remained in ground service and the senior engineer on the seniority district with a standing bid on file for the engineers' guaranteed extra board will be paid the greater of the earnings of the assignment or a minimum of one guarantee day at the current guarantee board rate of pay. If the employee so used is also the senior engineer with a standing bid on file for the engineers' guaranteed extra board, he will be paid one guarantee day in addition to all other earnings.

**ARTICLE 14.**      **LOCOMOTIVE ENGINEER INSTRUCTORS**

**Selection of Engineer Instructors**

Upon the effective date of this Article, the Brotherhood of Locomotive Engineers (BLE) will provide the Carrier with a list of local BLE representatives to contact in connection with the election of engineer instructors. These local BLE representatives will provide the designated Carrier officers with a list of engineers who are willing to act as engineer instructors, working at that location. The Carrier will select engineer instructors at a given location from the list before considering other engineer volunteers working at the location. If the Carrier selects other engineers who volunteer before all engineers on the list have been selected, engineers on the list not selected will be advised why they were not selected. The local BLE representative will update this list, as necessary.

If there are not sufficient engineers on the list provided by the BLE, together with other volunteers, to meet the Carrier's need for instructors at a given location, the Carrier may designate additional engineers as instructors.

**Instructor Allowance**

An engineer instructor working with a trainee or, at the direction of the Carrier, with another engineer for purposes of maintaining the other engineer's qualifications, will be paid \$24.00 (subject to future general wage increases) for the trip or tour of duty. This allowance will be paid above any guarantee earned by an engineer on an engineers' guaranteed extra board. One instructor allowance will be paid for each engineer trainee that is instructed during a trip or tour of duty.

### Instructor Training and Duties

The Carrier may require specialized training for engineers selected as engineer instructors. If specialized training is required, instructors will be paid what they would have earned had they remained marked up and worked during the training period. The Carrier will provide reimbursement for approved transportation to the training facility, lodging while in training and a \$25.00 per day meal allowance not subject to future general wage increases. If an engineer does not use the company provided lodging facility and commutes to the specialized training classes, he will be reimbursed for round trip mileage on a daily basis from home to the training facility and will be paid a \$10.00 per day meal allowance for the training unless lunch is provided.

### Engineer Instructor Responsibilities

The engineer instructor is expected to permit the trainee to operate the engine and perform other functions of an engineer while under his direction, to the degree and in the areas where he feels the trainee has reached the level of competency to do so.

The engineer instructor will be expected to comply with the operating rules, safety rules and mechanical book of instructions and to require that the trainee does likewise. The engineer instructor will not be held responsible for such things as broken knuckles, damaged drawbars or rough handling when the engine is operated by a trainee.

If the trainee is operating the engine, the engineer instructor must call attention to any oversight or error on the part of the trainee and, in cases where the situation warrants, take immediate and positive action to see that engine and train handling is properly performed in accordance with the rules and safe handling procedures. Particular attention must be given to observance of such items as speed restrictions, signal aspects and other conditions which would require immediate action to avoid serious consequences.

If an incident occurs while the trainee is operating the engine, the engineer instructor will not be held out of service or have his engineer certification suspended pending investigation (either a disciplinary investigation held under the terms of the collective bargaining agreement or a hearing under the FRA regulations governing the certification of engineers) of the alleged violation of the rules, except in serious cases where fault seems apparent. By way of illustration but not limitation, "serious cases" is intended to mean such matters as gross insubordination, use of intoxicants, or where continuance in service would constitute, in Carrier's opinion, a hazard to the public, the Carrier, its employees or equipment. If the incident occurring while the trainee is operating the engine results in a formal investigation, the degree of responsibility of the engineer instructor will be carefully weighed in light of the performance and compliance with the above criteria as developed in the record of the investigation.

(Note: The parties understand that the FRA regulations concerning the qualification and certification of locomotive engineers govern the initial certification of engineers and the subsequent suspension or revocation of the certification, and that, as to the matters

controlled by the FRA regulations, in the case of any conflict between this agreement and the regulations which may arise, the requirements of the regulations govern.)

Engineer instructors will be required to complete progress, performance and evaluation reports on trainees assigned to them, as may be directed. Competence, judgment, or other traits or attitudes on the part of the trainee will be reported by the engineer instructor, however, the Carrier pledges to treat such reports confidentially.

#### Relief from Working with Trainees

Instructors may, after working with trainees for six (6) consecutive calendar months, request relief from training for a period of up to sixty (60) consecutive calendar days. If there are sufficient experienced instructors (instructors previously selected and used to train trainees) available at a location to meet the Carrier's needs, instructors may request and be granted relief from training beyond the sixty (60) consecutive calendar days provided in this section.

#### Effect of this Article

This Article supersedes all previous agreements, practices or understandings regarding locomotive engineer instructors working with trainees.

### **ARTICLE 15.**

### **GUARANTEED EXTRA BOARDS**

Effective with the implementation of this agreement, Article IX - Guaranteed Extra Board, Section (b), of the January 1, 1990 agreement between the BLE and ATSF 1990 is abrogated and replaced by the following:

Post October 31, 1985 new hire engineers will not have their guarantee reduced by the percentage applicable to engineers' earnings in Article IV, Section 6 of the May 19, 1986 Arbitrated National Agreement.

Effective December 1, 1995, the guarantee amount provided for in Section (4) of "Attachment C" in the January 1, 1990 agreement between the BLE and ATSF of \$2500 for each pay period, the guarantee amount for less than a full payroll period, i.e., 1-15 or 16 to end month, of \$166.67 for each full calendar day on the board and available for service, and the deduction from guarantee amount of \$166.67 per calendar day or portion thereof that an engineer is not available for service are subject to general wage increases and cost-of-living adjustments.

Effective with the implementation of this agreement, the guarantee deduction method for being off of the guaranteed extra board as described in Section 4 of "Attachment C" of the January 1, 1990 agreement between the BLE and ATSF will be made based on the following distribution:

Monday	85% of daily guarantee rate
Tuesday	85% of daily guarantee rate
Wednesday	85% of daily guarantee rate
Thursday	85% of daily guarantee rate
Friday	115% of daily guarantee rate
Saturday	115% of daily guarantee rate
Sunday	115% of daily guarantee rate

## **ARTICLE 16.**

## **ROAD/YARD WORK**

Effective with the implementation of this agreement, Article VII - Road/Yard, Section 1 - Road Engineers, parts (a) and (b) of the January 1, 1990 agreement between the BLE and ATSF will be amended to include the following provisions of Presidential Emergency Board No. 219, dated January 15, 1991, as clarified and modified by Special Board No. 102-29, Article VIII, Section 1 parts (a) and (c).

Part (a) will be amended to include the following from PEB 219, Article VIII:

Pursuant to the new road/yard provisions contained in the recommendations of Presidential Emergency Board No. 219, as clarified, a road crew may perform in connection with its own train without additional compensation one move in addition to those permitted by previous agreements at each of the (a) initial terminal, (b) intermediate points, and (c) final terminal. Each of the moves -- those previously allowed plus the new ones -- may be any one of those prescribed by the Presidential Emergency Board: pick-ups, set-outs, getting or leaving the train on multiple tracks, interchanging with foreign railroads, transferring cars within a switching limit, and spotting and pulling cars at industries.

Part (b) will be amended to include the following from PEB 219 Article VIII:

The crew of an over-the-road solid run-through train may perform one move as prescribed, in addition to delivering and/or receiving their train in interchange.

## **ARTICLE 17.**

## **YARD ENGINEER PILOT**

Engineer yard pilot assignments, hereinafter identified as yard assignments working under applicable Santa Fe schedule rules and working with an engineer and one ground service employee may be established to perform the following work at a yard location:

Air test(s)

Assemble power

Wye power

Cut remote units used as helper engines in and out of trains

Double outbound trains using the minimum number of tracks for departure

Yard inbound trains within yard limits using the minimum number of tracks

Set out bad orders.

Handle power to and from any location within the terminal limits.

Yard engineer pilots will not be required to do general yard switching.

When an extra yard engineer pilot is called for more than three (3) consecutive days during the same spread of hours the assignment will be considered a regular assignment and will be advertised.

The rate of pay for a yard engineer pilot per day of eight hours or less will be the regular five day yard rate.

## **ARTICLE 18.**

## **AUTOMATIC MARKUP**

When an engineer is off work for any reason, e.g., layoff for personal business, observance of an annual leave day, vacation of less than ten (10) days' duration, sickness, sickness in family, or bereavement, he will be automatically marked up and expected to be available for service at the end of the layoff period. Should an engineer desire to extend his layoff, he must request the extension prior to the time his layoff is scheduled to end.

## **ARTICLE 19.**

## **BASIC DAY THROUGH FREIGHT MILEAGE**

Effective with the implementation of this agreement, the basic day mileage for through freight engineers (including deadhead) shall be 130 miles until otherwise changed by a future agreement between the parties.

## **ARTICLE 20.**

## **PROFIT SHARING**

Effective January 1, 1996, Articles II and IV and "Attachment B" in the January 1, 1990 agreement between the BLE and ATSF are rescinded in their entirety, and the cost-of-living ("COLA") adjustment and profit sharing plan provided for there are terminated (although ATSF engineers' profit sharing based on 1995 results will still be distributed, no later than April 30, 1996). In place of the terminated COLA and profit sharing plan, a new profit sharing plan shall be established for ATSF engineers, effective January 1, 1996, according to the following terms.

Under the new plan ("PS" Plan), each ATSF engineer may receive a profit sharing payment no later than April 30 of the year immediately following each "performance" (calendar) year, the first one of which shall be 1996. Such payment shall have a maximum potential of (be up to) four percent (4%) of the engineer's regular earnings (regular earnings exclude such things as any benefit buy-out payment, moving/real estate benefit, previous year's profit sharing payment, etc.) as an engineer on ATSF property in the performance year, except any earnings based on his service as a yard engineer and any based on his service as a road switcher engineer. These base earnings (regular engineer earnings excluding any received for yard and/or road switcher service) are the engineer's "covered regular earnings" for purposes of the PS Plan.

The actual share (up to but not greater than 4%) of each engineer's covered regular earnings which the payment shall be for a given performance year, shall be determined by and be equal to the level of (percentage of maximum potential) payout made under the Incentive Compensation Plan for exempt employees ("ICP") for the same performance year, based on the company-wide goals set specifically for that performance year under the ICP. [Currently, the types of company-wide goals relate to: net revenue from operations ("NRFO") achievement, on-time performance achievement, and safety (injury-free) achievement.] Eighty percent (80%) of each engineer's PS Plan total payment (up to 4% of his covered earnings) shall be based on the company-wide NRFO goal achievement, ten percent (10%) shall be based on the company-wide on-time performance goal achievement, and the remaining ten percent (10%) shall be based on the safety (injury-free) goal achievement.

As an example, if for a particular performance year, the ICP payout level for the NRFO goals ends up at 100% of maximum, the ICP payout level for the on-time goal ends up at 80% of maximum, and the ICP payout level for the safety goal ends up at 90% of maximum, then the engineer's PS Plan payment for the performance year would equal 3.88% of his covered regular earnings (80% of 4% x 100%, plus 10% of 4% x 80%, plus 10% of 4% x 90%).

If the design of the BNSF ICP itself (not the specific NRFO, on-time, or safety goals set from year to year) is ever changed in a way materially affecting its impact on engineers covered by the PS Plan provided for in this Article of this Agreement, then the parties shall meet promptly to revise the PS Plan in a way which does not adversely affect the interests of engineers covered by it. If the parties cannot so agree, they shall submit the matter to expedited, parties-pay, final and binding arbitration before a single neutral. In such event, the arbitrator shall have jurisdiction exclusively to reformulate the PS Plan in a way which has no material adverse effect on either

covered engineers or the Carrier and which effectuates the intent represented here in view of the changed conditions.

## **ARTICLE 21.**

## **UNION SHOP**

This article replaces any union shop agreements or agreement provisions currently in effect on the Carrier's lines.

### **Section 1.**

In accordance with and subject to the terms and conditions hereinafter set forth, all employees of the Carrier now or hereafter subject to the rules and working conditions agreements between the parties hereto, except as hereinafter provided, shall, as a condition of their continued employment subject to such agreements, become members of the Organization, party to this Article representing their craft or class within sixty calendar days of the date they first perform compensated service as such employees after the effective date of this Article, and thereafter shall maintain membership in such Organization; except that such membership shall not be required of any individual until he has performed compensated service on thirty days within a period of twelve consecutive calendar months. Nothing in this Article shall alter, enlarge, or otherwise change the coverage of the present or future rules and working conditions agreements.

### **Section 2.**

The requirements of membership provided for in Section 1 of this Article shall be satisfied if any employee shall hold or acquire membership in any one of the labor organizations national in scope organized in accordance with the Railway Labor Act and admitting to membership employees of a craft or class in train, yard, engine or hostling service, that is, in any of the services or capacities covered in Section 3, First (h), of the Railway Labor Act, defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, provided, however, that nothing contained in this Article shall prevent any employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of the services above specified.

### **Section 3.**

- (a) Employees who retain seniority under the rules and working conditions agreements governing their class or craft and who are regularly assigned or transferred to full time employment not covered by such agreements, or who, for a period of thirty days or more are (1) furloughed on account of force reduction, or (2) on leave of absence, or (3) absent on account of sickness or disability, will not be required to maintain membership as provided in Section 1 of this Article so long as they remain in such other employment, or furloughed or absent as herein provided, but they may do so at their option. Should such

employees return to any service covered by the said rules and working conditions agreements and continue therein thirty calendar days or more, irrespective of the number of days actually worked during that period, they shall, as a condition of their continued employment subject to such agreements, be required within thirty-five calendar days from date of their return to such service to comply with the provisions of Sections 1 and 2 of this Article.

- (b) The seniority status and rights of employees furloughed to serve in the Armed Forces or granted leaves of absence to engage in studies under an educational aid program sponsored by the Federal Government or a State Government for the benefit of ex-servicemen shall not be terminated by reason of any of the provisions of this Article but such employees shall, upon resumption of employment, be considered as new employees for the purposes of applying this Article.
- (c) Employees who retain seniority under the rules and working conditions agreements governing their class or craft, and who, for reasons other than those specified in paragraphs (a) and (b) of this Section, are not in service covered by such agreements or leave such service, will not be required to maintain membership as provided in Sections 1 and 2 of this Article as long as they are not in service covered by such agreements, but they may do so at their option. Should such employees return to any service covered by the said rules and working conditions agreements they shall, as a condition of their continued employment, be required, from the date of return to such service to take membership in an organization specified in Section 1 or 2 of this Article.

#### Section 4.

Nothing in this Article shall require an employee to become or to remain a member of the Organization if membership is not available to such employee upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employee is denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. For purposes of this Article, dues, fees, and assessments, shall be deemed to be "uniformly required" if they are required of all employees in the same status at the same time.

#### Section 5.

- (a) Each employee covered by the provisions of this Article shall be considered by the Carrier to have met the requirements of the Article unless and until the Carrier is advised to the contrary in writing by the Organization. The Organization will notify the Carrier in writing by Registered or Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, of any employee who it is alleged has failed to comply with the terms of this Article and who the Organization therefore claims is not entitled to continue in employment subject to the rules and working conditions agreements. The form of notice to be used shall be agreed upon by the Carrier and the Organization, and the form



shall make provision for specifying the reasons for the allegation of noncompliance. Upon receipt of such notice, the Carrier will, within ten calendar days of such receipt, so notify the employee concerned in writing by Registered or Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. Copy of such notice to the employee shall be given the Organization. An employee so notified who disputes the fact that he has failed to comply with the terms of this Article shall, within a period of ten calendar days from the date of receipt of such notice, request the Carrier in writing by Registered or Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, to accord him a hearing. Upon receipt of such request the Carrier shall set a date for hearing which shall be held within ten calendar days of the date of receipt of request therefor. Notice of the date set for hearing shall be promptly given the employee in writing with copy to the Organization, by Registered or Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. A representative of the Organization shall attend and participate in the hearing. The receipt by the Carrier of a request for a hearing shall operate to stay action on the termination of employment until the hearing is held and the decision of the Carrier is rendered.

In the event the employee concerned does not request a hearing as provided herein, the Carrier shall proceed to terminate his seniority and employment under the rules and working conditions agreements not later than thirty days from receipt of the above described notice from the Organization, unless the Carrier and the Organization agree otherwise in writing.

- (b) The Carrier shall determine on the basis of evidence produced at the hearing whether or not the employee has complied with the terms of this Article and shall render a decision within twenty calendar days from the date that the hearing is closed, and the employee and the Organization shall be promptly advised thereof in writing by Registered or Certified Mail, Return Receipt Requested.

If the decision is that the employee has not complied with the terms of this Article, his seniority and employment under the rules and working conditions agreements shall be terminated within twenty calendar days of the date of said decision except as hereinafter provided or unless the Carrier and Organization agree otherwise in writing.

If the decision is not satisfactory to the employee or to the Organization it may be appealed in writing, by Registered or Certified Mail, Return Receipt Requested, directly to the highest officer of the Carrier designated to handle appeals under this Article. Such appeals must be received by such officer within ten calendar days of the date of the decision appealed from and shall operate to stay action on the termination of seniority and employment, until the decision on appeal is rendered. The Carrier shall promptly notify the other party in writing of such appeal, by Registered or Certified Mail, Return Receipt Requested. The decision on such appeal shall be rendered in writing within twenty calendar days of the date the notice of appeal is received, and the employee and the Organization shall be promptly advised thereof in writing by Registered or Certified Mail, Return Receipt Requested.

If the decision on such appeal is that the employee has not complied with the terms of this Article his seniority and employment under the rules and working conditions agreements shall be terminated within twenty calendar days of the date of said decision unless selection of neutral is requested as provided below, or unless the Carrier and the Organization agree otherwise in writing. The decision on appeal shall be final and binding unless within ten calendar days from the date of the decision the Organization or the employee involved requests the selection of a neutral person to decide the dispute as provided in Section 5(c) below. Any request for selection of a neutral person as provided in Section 5(c) below shall operate to stay action on the termination of seniority and employment until not more than ten calendar days from the date decision is rendered by the neutral person.

- (c) If within ten calendar days after the date of a decision on appeal by the highest officer of the Carrier designated to handle appeals under this Article the Organization or the employee involved requests such highest officer in writing by Registered or Certified Mail, Return Receipt Requested, that a neutral be appointed to decide the dispute, a neutral person to act as sole arbitrator to decide the dispute shall be selected by the highest officer of the Carrier designated to handle the appeals under this Article or his designated representative, the General Chairman of the Organization or his designated representative, and the employee involved or his representative. If they are unable to agree upon the selection of a neutral person, any one of them may request the chairman of the National Mediation Board in writing to appoint such neutral. The Carrier, the Organization and the employee involved shall have the right to appear and present evidence at a hearing before such neutral arbitrator. Any decision by such neutral arbitrator shall be made within thirty calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties as to the matters decided within the limitations of paragraph (i) of this section. The Carrier, the employee, and the Organization shall be promptly advised thereof in writing by Registered or Certified Mail, Return Receipt Requested. If the position of the employee is sustained, the fees, salary and expenses of the neutral arbitrator shall be borne in equal shares by the Carrier and the Organization; if the employee's position is not sustained, such fees, salary and expenses shall be borne in equal shares by the Carrier, the Organization and the employee.
- (d) It is understood that if an employee produces evidence to an officer or Local Chairman of the Organization that he is a member in any one of the Labor Organizations as specified in Section 2 of this Article, that will satisfy this Article and no notice will be served by the Organization on the Carrier to have employee removed from service. Employee will be required to produce such evidence on demand of an officer or Local Chairman of the Organization, but will not be required to produce such evidence more than once in a calendar month. If employee fails or refuses to produce such evidence, he may be cited to the Carrier by the Organization as not complying with this Article.
- (e) The time periods specified in this section may be extended in individual cases by written agreement between the Carrier and the Organization.

- (f) Provisions of investigation and discipline rules contained in the rules and working conditions agreements between the Carrier and the Organization will not apply to cases arising under this Article.
- (g) The General Chairman of the Organization shall notify the Carrier in writing of the title(s) and the address(es) of its representatives who are authorized to serve and receive the notices described in this Article. The Carrier shall notify the General Chairman of the Organization in writing of the title(s) and address(es) of its representatives who are authorized to receive and serve the notices described in this Article.
- (h) In computing the time periods specified in this Article, the date on which a notice is received or decision rendered shall not be counted.
- (i) Decisions made pursuant to this section shall be confined to determination of the fact of compliance or noncompliance by the employee with the terms of this Article but do not apply to any questions of law arising out of or in connection with the legally permissible limits of this Article under applicable law.

#### Section 6.

Other provisions of this Article to the contrary notwithstanding, the Carrier shall not be required to terminate the employment of an employee until such time as a qualified replacement is available. The Carrier may not, however, retain such employee in service under the provisions of this section for a period in excess of sixty calendar days from the date of the last decision rendered under the provisions of Section 5, or ninety calendar days from the date of receipt of notice from the Organization in cases where the employee does not request a hearing. The employee whose employment is extended under the provisions of this section shall not, during such extension, retain or acquire any seniority rights. The above period may be extended by agreement between the Carrier and the Organization.

#### Section 7.

An employee whose seniority and employment under the rules and working conditions agreements is terminated pursuant to the provisions of this Article or whose employment is extended under Section 6 shall have no time or money claims by reason thereof.

If the final determination under Section 5 of this Article is that an employee's seniority and employment in a craft or class shall be terminated, no liability against the Carrier in favor of the Organization or other employees based upon an alleged violation, misapplication or non-compliance with any part of this Article shall arise or accrue during the period up to the expiration of the 60 or 90 day periods specified in Section 6, or while such determination may be stayed by a court, or while a discharged employee may be restored to service pursuant to judicial determination. During such periods, no provision of any other agreement between the parties hereto shall be used as the basis for a grievance or time or money claim by or on behalf of any employee against the Carrier predicated upon any action taken by the Carrier in applying or

complying with this Article or upon an alleged violation, misapplication or non-compliance with any provision of this Article. If the final determination under Section 5 of this Article is that an employee's employment and seniority shall not be terminated, his continuance in service shall give rise to no liability against the Carrier in favor of the Organization or other employees based upon an alleged violation, misapplication or non-compliance with any part of this Article.

#### Section 8.

In the event that seniority and employment under the rules and working conditions agreements, is terminated by the Carrier under the provisions of this Article, and such termination of seniority and employment is subsequently determined to be improper, unlawful, or unenforceable, the Organization shall indemnify and save harmless the Carrier against any and all liability arising as the result of such improper, unlawful, or unenforceable termination of seniority and employment; provided, however, that this section shall not apply to any case in which the Carrier is the plaintiff or the moving party in the action in which the aforesaid determination is made or in which case the Carrier acts in collusion with any employee; provided further, the aforementioned liability shall not extend to be expense to the Carrier in defending suits by employees whose seniority and employment are terminated by the Carrier under the provisions of this Article.

#### Section 9.

An employee whose employment is terminated as a result of noncompliance with the provisions of this Article shall be regarded as having terminated his employee relationship for vacation purposes.

#### Section 10.

In the application of this Union Shop Article, an employee of the company who is not a member of a labor organization as required by Sections 1 and 2 of this Article, or any new employee entering the service of the company signatory hereto after the effective date of this Article, if he would otherwise be required to be a member of a labor organization under the Union Shop Article, will be deemed to have met the requirements of the Union Shop Article provided he pays to a labor organization specified in Section 1 or 2 of this Article the periodic dues, initiation fees and assessments (not including fines and penalties) uniformly required of all members of such labor organization within the time limits provided for in the Union Shop Article.

### **ARTICLE 22.**

### **GENERAL PROVISIONS**

The effectiveness of this Agreement is entirely contingent upon the currently tentative core "National" Agreement between the National Carriers' Conference Committee ("NCCC") and the BLE becoming effective by April 27, 1996 (or such other date as may be agreed upon by the NCCC and BLE). If and only if such core National BLE Agreement does become effective by the

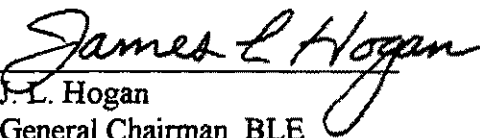
date specified, then this Agreement shall also become effective contemporaneously according to its terms. If the core National BLE Agreement does not become effective by the date specified, then this Agreement shall be null and void in its entirety.

The parties also recognize that if the core National BLE Agreement does become effective by the date specified, then this Agreement, all subjects addressed in it, and any and all section 6 notices served or which could have been served by either party prior to or in connection with this Agreement are subject to the provisions of Article XII, Section 2 in the core National BLE Agreement.

DATED THIS 1st DAY OF JUNE, 1996, AT FORT WORTH, TEXAS.

FOR:

BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS

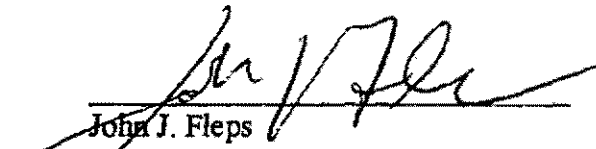
  
J. L. Hogan  
General Chairman, BLE

  
J. D. Mullen  
First-Vice Chairman, BLE

  
G. R. DeBolt  
Vice President, BLE

FOR:

THE ATCHISON, TOPEKA AND  
SANTA FE RAILWAY COMPANY

  
John J. Fleps  
Vice President - Labor Relations