

## MEMORANDUM OF AGREEMENT

Between  
BNSF Railway  
And  
SMART-TD

In order to increase crew flexibility and utilization at Denver, the Parties agree, on a non-referable basis, to the following at Denver, CO under a 120-day pilot:

### 1. Establishment of New Service

- A. A pool of trainmen will be established to handle traffic between Denver and Cheyenne/La Junta/Pueblo/Sterling/Trinidad. A pool of trainmen will be established at Trinidad to handle traffic between Trinidad and Denver/Textline. These ID pools will protect freight service, in all directions within this territory and includes all routes and side trips.

Note: These pools will not operate trains over the Raton Subdivision.

- i. The Denver – Trinidad route will be a double ended pool with home terminals at both Denver and Trinidad.
    - a. BNSF will manage the distribution of work between the home terminal and away-from-home terminal pool freight trainmen at Denver and Trinidad, dependent upon the needs of the service and trainman availability, subject to the equity provisions in **Paragraph 5** herein.
    - b. Pueblo will not be considered a release point for trainmen working the route Denver – Trinidad, or Denver – La Junta.
  - ii. For employees performing pool freight service out of Denver, Denver will be the home terminal and Cheyenne, La Junta, Pueblo, Sterling and Trinidad will be the away-from-home terminals.
  - iii. For employees performing pool freight service out of Trinidad, Trinidad will be the home terminal, and Denver and Textline will be the away-from-home terminals.
  - iv. All trainmen in this pool will receive a 2-hour call for service at the home and away-from-home terminals.
- B. Denver headquartered trainmen in this service may operate their trains through the following terminal, on continuous operation without release, as described below:
- i. Denver:
    - a. Up to and including MP 27.8 (NSS Boulder) on the Front Range Subdivision.

- b. Up to and including MP 503.7 (East Keenesburg) on the Brush Subdivision.
- c. Up to and including MP 28.8 (SSS Orsa) on the Pikes Peak Subdivision.

NOTE: For reference the current switching limits at Denver, CO are as follows:

North: MP 3.75 on the Front Range Subdivision  
East: MP 537.3 on the Brush Subdivision  
South: MP 6.84 on the Pikes Peak Subdivision  
West: MP 4.7 on the Golden Subdivision

ii. La Junta:

- a. Up to and including MP 533.6 (Las Animas Jct) on the Boise City Subdivision.

iii. Trinidad:

- a. Up to and including MP 236 (South Barela) on the Twin Peaks Subdivision

C. Trinidad headquartered trainmen in this service may operate their trains through the following terminal, on continuous operation without release, as described below:

i. Trinidad:

- a. Up to and including MP 180.1 (Mayne) on the Spanish Peaks Subdivision.
- b. Up to and including MP 236 (South Barela) on the Twin Peaks Subdivision.

ii. Denver:

- a. Up to and including MP 27.8 (NSS Boulder) on the Front Range Subdivision.
- b. Up to and including MP 503.7 (East Keenesburg) on the Brush Subdivision.

iii. La Junta:

- a. Up to and including MP 550.7 (Casa) on the Boise City Subdivision.

D. All pool turns will be identified with a prior road designation. "S" for former ATSF; "Q" for former BN-CB&Q; and "C" for former C&S.

- i. When used between Denver and Cheyenne, and Trinidad and Texline the former C&S schedule agreement, including Crew Consist, will apply.
- ii. When used between Denver and Sterling, the former CB&Q schedule agreement, including Crew Consist, will apply.

- iii. When used between Denver and Pueblo, Denver and La Junta, and Denver and Trinidad, the former ATSF E/W Lines schedule agreement, including Crew Consist, will apply.
- E. The Parties agree to implement a fatigue management system (as described in Side Letter No. 1) that would apply to all pool service trainmen.
- F. Other than specifically outlined this Agreement, these ID Pools and ID Extra Boards will be administered under ATSF E/W Lines Schedule Rules.

## **2. Through Freight Service**

- A. Except as otherwise provided in this agreement, trainmen will be called first-in, first-out at each terminal provided that the first-out trainman has had rest under the Hours of Service Act. Should there be no trainmen who are rested, then an extra trainman may be called to operate for one round trip under the provisions of this Agreement.
- B. Trainmen working under the terms of this Agreement will be positioned at the home terminal based upon their tie-up times.
- C. Trainmen working under the terms of this Agreement will be positioned at the away-from-home terminals based upon home-on-duty times.
- D. When two pool trainmen are to be called for the same train (one to work and one to deadhead) and one of the trainmen is not rested and the other one is rested, the rested trainman will work the train and the unrested trainman will deadhead. Otherwise, applicable ATSF E/W Lines schedule rules apply.
- E. Pool trainmen called in this service to operate to a distant terminal will not be tied up between designated terminals, except when their movement is prevented (e.g., derailment of their train), or their route to destination is obstructed or impassable (e.g., wrecks or washouts).
- F. Trainmen in this service may be deadheaded via van or train, unless emergency conditions warrant another mode of transportation.

NOTE: Emergency conditions includes acts of God, wrecks, washouts, derailments, fires, floods and mudslides which interferes with the operation of trains.

- G. A trainman turned back to the home terminal short of the distant terminal for any reason will be paid a one-way trip rate of applicable route (subject to all future GWI and COLA) with overtime commencing after eight (8) hours (regardless of miles run). If the miles traversed are greater than that included in the one way trip rate, the trainmen will be paid any additional miles using CA Code MS over and above the trip rate with no extension of the overtime threshold.

- H. When a trainman is required to report for duty or is relieved from duty at a point other than the on/off duty points for these pools, BNSF shall provide suitable transportation for the trainman.
- I. Trainmen may trade trains operating in the same direction, but they will not be required to trade trains moving in the opposite direction. Compensation for trading trains is outlined in Part 9 below.

### 3. **ID Extra Board**

- A. A new Conductor's Guaranteed Road Extra Board will be created that will cover all road vacancies and extra service at Denver, including outlying assignments. If the Conductor's Guaranteed Road Extra Board is exhausted, the vacancy will be filled in accordance with applicable schedule rules of the assignment being filled.
- B. These extra board positions will be identified with a prior road designation. "S" for former ATSF; "Q" for former BN-CB&Q; and "C" for former C&S.
- C. This ID extra board will be governed by ATSF E/W lines guarantee and forfeiture provisions.
  - i. The ATSF E/W lines extra board formula of 25% will only be applied to the ATSF designated ("S" turns) in the pool, and trainman assignments governed by former ATSF E/W lines schedule rules.
  - ii. An employee who lays off more than twice in a pay period forfeits the guarantee and shall only receive pay for work performed in that pay period. Missing a call for service or calling for rest with less than 10 hours on duty under the Hours of Service Law shall be considered the same as laying off under the guarantee provisions of this Agreement.
  - iii. This ID extra board will replace existing road extra boards at Denver.
- D. The existing Conductor's Extra Board at Trinidad will now be governed as follows:
  - i. This extra board will be governed by ATSF E/W lines guarantee and forfeiture provisions.
  - ii. The ATSF E/W lines extra board formula of 25% will only be applied to the ATSF designated ("S" turns) in the pool, and trainman assignments governed by former ATSF E/W lines schedule rules.
  - iii. An employee who lays off more than twice in a pay period forfeits the guarantee and shall only receive pay for work performed in that pay period. Missing a call for service or calling for rest with less than 10 hours on duty under the Hours of Service Law shall be considered the same as laying off under the guarantee provisions of this Agreement.

#### **4. Uniform Hours of Service Relief and Turnaround Service**

- A. The extra boards will be the first source of supply for STAS/HOSR.
- B. If there is no one available on the extra board, the pools will be used for STAS/HOSR and will be compensated as follows:

- i. UTF Pool:

Crews used to perform turnaround service will be paid a one way trip rate of the route traversed with overtime commencing after eight (8) hours (regardless of miles run).

NOTE: If more than one route is traversed, the conductor will get the trip rate of the longest route traversed with overtime after eight (8) hours (regardless of miles run).

- ii. PWS Pool:

If a PWS trainman is used in this manner, he/she will be paid a round trip at the rate of their last working trip. These trainmen will not be subject to call until their next PWS call window.

- iii. Pool trainmen used to perform turnaround service will be paid a one-way trip rate of applicable route (subject to all future GWI and COLA) with overtime commencing after eight (8) hours (regardless of miles run). If the miles traversed are greater than that included in the one way trip rate, the trainmen will be paid any additional miles using CA Code MS over and above the trip rate with no extension of the overtime threshold.

- C. In the event there are no trains available when a PWS crew reports for duty, BNSF may use these crews for short turnaround service when extra board and UTF trainmen are available.
- D. A brakeman is not required when STAS/HOSR is performed on a former Santa Fe territory.

NOTE: It is understood that nothing in this Agreement can be construed as altering or amending the provisions of Article 1, Paragraph 1 of the October 1, 1992 Crew Consist Agreement.

- E. This does not eliminate or modify any "not called" claim from an employee who should have been used when a crew performing short turnaround service is used in violation of the short turnaround restrictions contained in Article 10 of the ATSF E/W Lines Conductor and Brakeman's Schedule.
- F. If the trainman is tied up at the home terminal, they will be placed to the bottom of home terminal board based on their tie-up time.

- G. If the trainman is tied-up at the away-from-home terminal they will be placed first out (available after rested). A trainman who is used for STAS and tied-up at the away-from-home terminal will not be called for a subsequent STAS unless there are no other rested crews at the AFHT. If this occurs, the trainman will be deadheaded home after the conclusion of the second STAS service.
- II. This does not preclude BNSF from using its already established rights under existing agreements to use, for instance, yardmen to perform such work.
- I. Nothing contained in this agreement is intended to prohibit these ID pool trainmen from being used on trains that traverse only part of the specified territory, provided trainmen are then handled forward to the opposite terminal, or paid as if they had been. Likewise, nothing in this agreement is intended to prohibit these trainmen from combining trains or exchanging trains with other trainmen destined to the same terminal.

## **5. Equity**

- A. The Parties will work together to address any equity concerns that may arise.
- B. Positions in these ID pools and the Denver ID extra board will be filled using an order of selection list that allocates turns between seniority rosters for former ATSF E/W Lines, BN-CB&Q, and C&S.
  - i. If an allocation position is not filled then the position will be open to any bidder with seniority at Denver or Trinidad.
- C. For employees working in this service who were on a former BN line (CB&Q or C&S) seniority roster prior to September 22, 1995, and who are otherwise qualified, Articles VII and VIII of the November 1, 1993 Crew Consist Agreement will continue to apply, whether working a job allocated to BN or to ATSF. Productivity fund contributions will continue to be made for the working train crew starts between Denver – Sterling, Denver – Cheyenne, and Trinidad - Texline, regardless of which employees are working on such assignments.
- D. Pueblo trainmen may recover their respective “equity” at La Junta in the south loop operation. The designated SMART-TD representatives shall advise the appropriate BNSF office of the number of turns to be allocated to the Pueblo Seniority District.

## **6. Called and Released**

- A. When a pool trainman is called and released at any point after being called for service such trainman will be paid a one-way trip rate of the trip for which called and stand last out on the board.

NOTE: The above provision will also apply to extra board employees called for “cut in” turns who are called to perform service in these pools.

- B. If a trainman is called and released at the away-from-home terminal, either before or after time of going on duty, they will be paid a basic day and stand first out on the board. If rest is required, the trainman may be runaround without penalty until legally rested.

NOTE: A trainman called and released at the away-from-home terminal will continue to be on heldaway from the trainman's prior tie-up time until the trainman is called to perform service to the home terminal.

#### **7. Vacancies and Lay Offs**

- A. When a pool trainman lays off, or a turn is unoccupied, and thereby creates a temporary vacancy, their turn will be removed from the board. When the trainman returns from layoff, their turn will be placed at the bottom of the working board.

NOTE: Layoffs resulting in permanent vacancies as defined by applicable CBA's will continue to be handled by the terms outlined in those CBA's.

- B. Temporary vacancies in these pools shall be protected by the next following rested pool turn. If there are no available rested pool turns available, BNSF will call an extra board trainman on a "cut in" turn that will operate for one round trip and then be removed from the pool upon tie-up at the home terminal.
- C. When using displacement rights to place to these pools, if the employee in question is a prior rights ATSF or BN trainman they must displace the junior trainman on an ATSF or BN allocation. If the trainman is a post-95 hire, trainmen must first place to open turns; if none, they must displace the junior trainman in the pool.
- D. When Conductors assume permanent vacancies in these pools, the pool turn they exercise their seniority to will be placed at the bottom of the home terminal board.
- E. Trainmen in these pools will not be allowed to lay off at an away-from-home terminal, except in case of emergency, such as illness or injury.

#### **8. Pool Regulation**

- A. The number of PWS turns in these pools will be determined by BNSF (following consultation with the designated SMART-TD representative) prior to the start of the bulletin period for the PWS schedules.
- B. Unless otherwise agreed to, the UTF portion of these pools will continue to be regulated within a mileage range of 3700 and 4200 with the understanding that this mileage range is indexed to account for the 130 mile basic day. It is also understood that trip rate mileage components will be used for regulation.

Note: The Parties will work together to ensure proper pool regulation, taking into consideration earnings and adequate time off.

**9. Compensation**

A. Trainmen will be compensated the following trip rates:

<u>Conductors</u>	<u>Trip Rate</u>	<u>Flip Rate</u>
Denver-Cheyenne	\$248.95	\$476.32
Denver-La Junta	\$374.54	\$712.82
Denver-Pueblo	\$276.41	\$515.98
Denver-Sterling	\$248.77	\$479.22
Denver-Trinidad	\$382.75	\$742.39
Denver-Trinidad via La Junta	\$565.75	\$752.63
Trinidad-Exline	\$252.74	\$527.16

<u>Brakemen</u>	<u>Trip Rate</u>	<u>Flip Rate</u>
Denver-Cheyenne	\$233.83	\$447.42
Denver-La Junta	\$338.81	\$655.23
Denver-Pueblo	\$245.21	\$470.70
Denver-Sterling	\$233.66	\$449.63
Denver-Trinidad	\$345.60	\$682.03
Denver-Trinidad via La Junta	\$516.50	\$692.61
Trinidad-Exline	\$237.10	\$495.04

i. When traversing Denver to Trinidad via La Junta, trainmen will continue to be allowed overtime at the threshold applicable to 184 miles plus the trip rate overtime extender.

Note 1: These trip rates will remain subject to all future GWI's and COLA's.

B. When used in service as outlined in Paragraph 1(B) and (C) above, trainmen will be compensated as follows. No extension of the current overtime threshold of the pools noted will occur:

<u>Conductors</u>	<u>Trip Rate</u>	<u>Flip Rate</u>
Denver-Cheyenne	\$433.74	\$661.09
Denver-La Junta	\$559.35	\$897.63
Denver-Pueblo	\$487.97	\$727.54
Denver-Sterling	\$434.89	\$665.33
Denver-Trinidad	\$567.56	\$927.19
Denver-Trinidad via La Junta	\$766.26	\$937.44
Trinidad-Exline	\$437.53	\$711.92

<u>Brakemen</u>	<u>Trip Rate</u>	<u>Flip Rate</u>
Denver-Cheyenne	\$407.35	\$620.91
Denver-La Junta	\$512.35	\$828.77
Denver-Pueblo	\$444.34	\$669.83
Denver-Sterling	\$408.01	\$623.98
Denver-Trinidad	\$519.14	\$855.57
Denver-Trinidad via La Junta	\$704.12	\$866.15
Trinidad-Texline	\$410.61	\$668.52

Note 1: These trip rates will remain subject to all future GWI's and COLA's.

- C. Trainmen in these pools will be afforded continuous held-away after 16 hours at the away-from-home terminals.
- D. When a trainman is tied up under the Hours of Service Law en route to the final terminal, the trainman will be paid on a minute-basis from the time the trainman expires under the Hours of Service Law until the departure of transportation (at the location where the trainman expired) to the final terminal.
  - i. At no time will wait time and overtime be paid concurrently. When the trainman meets the qualifications for both payments, only overtime will be due.
- E. When a trainman trades trains in accordance with Part 2(F), the trainman will be paid one hour in addition to all other earnings for the trip. Only one such payment will be due per tour of duty.
- F. Any required familiarization trips will be compensated at the Brakeman's trip rate of the assignment for which called to familiarize.

#### **10. Uniform Vacation and Personal Leave Day Progression**

- A. Denver Road Conductors and Trainmen will have one (1) consolidated vacation roster.
- B. Trinidad Road Conductors and Trainmen will have one (1) consolidated vacation roster.
- C. The Santa Fe Vacation Agreement will apply to all employees owning turns in the consolidated pools and extra boards covered by this Agreement.
- D. The Santa Fe Personal Leave Day ("PLD") progression will apply all employees owning turns in the consolidated pools and extra boards covered by this Agreement with a limit of 11 PLDs.

## **11. Ebb & Flow and Primary Recall**

- A. ATSF Flowback provisions will only apply to ATSF equity allocated turns; C&S Flowback provisions will only apply to C&S equity allocated turns; and CBQ Flowback provision will only apply to CBQ equity allocated turns.

Example: If an ATSF engineer has displacement rights and wishes to go to ground service, they may only place on an ATSF equity allocated turn.

- B. Any employee subject to ATSF E/W Primary Recall at Denver may be recalled to any position in the ID pool or ID extra board regardless of former road designation.

## **12. Meal period**

- A. In order to expedite the movement of trains operating under this Agreement, trainmen will not stop their train to eat. All meal allowances are included in the trip rates, so no additional compensation due for a meal en route.

NOTE: This does not preclude a trainman from seeking food items at retail locations in close proximity to where they may be standing awaiting other rail traffic, or for unforeseen reasons, so long as this does not create undue delay to the operation. It is understood that the trainmen will be required to obtain permission from the Dispatcher prior to leaving the train to obtain food. Should this request be denied, no penalty is due.

## **13. Lodging and AFHT Meals**

- A. Suitable lodging (as defined by the ATSF E/W Lines schedule agreements) shall be provided for ID pool trainmen tied up at their away-from-home terminal.
- B. ID pool trainmen who are performing this ID pool service will be allowed payment for meals at the away-from-home terminal in accordance with national agreement provisions, as amended.

## **14. Investigations and Discipline**

The Uniform Investigation Rule as cited in Side Letter No. 2 will apply to employees in the consolidated pools and extra boards covered by this Agreement.

## **15. Protection**

Any trainman adversely affected as a result of the implementation of the original Article IX notices served on June 19, 2017 will continue to receive the protection afforded under Article IX, Section 7 of the 1985 UTU National Agreement.

**16. Modification Clause**

Except as specifically provided herein, nothing contained herein shall be construed as modifying, amending or superseding any of the provisions of agreements or schedule rules as implemented between BNSF and SMART-TD.

This agreement shall take effect on **August 9, 2018**, and shall remain in effect for a minimum of 120 days. After the initial 120 days, either Party may cancel this pilot by giving 15 days' advanced written notice to the other Party. The Parties agree to discuss this pilot every 30 days for the duration of the pilot.

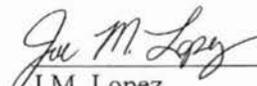
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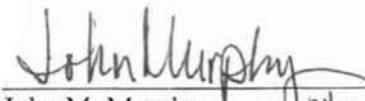
For SMART-TD

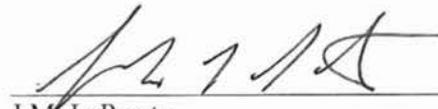
  
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John M. Murphy *mbc*  
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J.M. LaPresta  
General Chairman, SMART-TD

  
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L.R. Miller, Jr.  
General Chairman, SMART-TD

## Side Letter No. 1 – Fatigue Mitigation

Unless otherwise agreed to, the following fatigue mitigation systems will apply:

### A. **Predictive Work System:**

Some percentage of the total turns needed to protect service in this multidirectional pool will be under a Predictive Work Schedule (PWS). The exact number of PWS turns will be determined by BNSF after consultation with the designated SMART—TD representative, and may change to reflect traffic conditions.

- i. Approximately half of the PWS turns identified in Section 3(A)(i) may be designated as “adjustment turns”.

NOTE: Adjustment turns will be removed or added on the agreed upon board adjustment day to reflect a change in traffic conditions. The bulletin for the PWS pool will specify which turns are adjustment turns.

- ii. PWS trainmen will be provided a schedule of their on-duty times for 8-12 weeks in advance, unless otherwise agreed to. BNSF retains the right to call the PWS trainman to report for service up to two (2) hours prior to their scheduled on-duty time or two (2) hours after their scheduled on-duty time. If the PWS trainman receives no call from BNSF, they are to report for duty at the end of this four (4) hour window.

Example: PWS Trainman Jones has a scheduled on duty time at 1500 hours on August 1, 2017. PWS Trainman Jones is responsible for protecting any calls for service with an on-duty time between 1300 and 1700 hours.

If no call for service is received, PWS Trainman Jones is required to report for duty at 1700 hours on August 1, 2017.

- iii. These trainmen will not be subject to call until their next PWS on-duty window, except for in emergency.
  - a. In case of emergency or obstructions (which includes acts of God, wrecks, washouts, derailments, fires, floods, and mudslides which interfere with the operation of trains), the Division General Manager (or their designee, i.e. Superintendent or Terminal Manager) will immediately notify all relevant parties that an emergency has affected the PWS assignments. BNSF will notify those immediately affected and discuss with the relevant parties that adjustments will need to be initiated to suspend PWS turns until service is restored and PWS can be reinitiated.
- iv. When displacing to PWS service, the displacing trainman must displace the junior trainman in PWS service.

NOTE: This provision does not affect or limit agreement provisions related to the filling of permanent trainman vacancies. Demoted trainmen will still be required to fulfill promotional obligations in accordance with existing agreements.

- v. Trainmen are required to work at least one compensated trip prior to being allowed to bid off. The vacated position will be filled consistent with SMART-TD rules.
- vi. Trainmen assigned to PWS turns may not bid to other PWS turns.
- vii. A PWS trainman can bid out of the PWS service and later bid back into the PWS service to fill subsequent vacancies.
- viii. During the course of this pilot, it is understood there will be no force assignments to a bulletined PWS pool turn. Any bulletined PWS pool turn not filled will be placed in unassigned through freight (UTF) service.

**B. Unassigned Through Freight (UTF) Service**

- i. The remaining non-PWS turns needed to protect service in the Denver or Trinidad multidirectional pool will be in unassigned through freight (UTF) service. The exact number of UTF turns will be determined by BNSF following consultation with the designated Local Chairman and may change to reflect traffic conditions.
- ii. UTF trainmen will be called first-in, first-out at each terminal provided that the first-out trainman has had full rest under the Hours of Service Act. Should there be no trainmen who are rested, then an extra trainman may be called to operate for one round trip under the provisions of this agreement.
- iii. Any UTF trainman who accumulates four (4) consecutive starts will be afforded the option of booking twenty-four (24) or forty-eight (48) hours of rest.

NOTE 1: Any layoff event, paid or unpaid, that takes place will result in the trainman's start count being reset to zero (0).

**Side Letter No. 2 - Discipline**

ARTICLE I- GENERAL REQUIREMENTS

- a. No employee shall be discharged, suspended, censured (reprimanded), or otherwise disciplined without just cause determined by a fair and impartial hearing, except that an employee may waive a hearing in accordance with Article II(b) of this Agreement.
- b. No employee shall be held from service pending hearing except in serious cases, such as theft, altercation, Rule 'G' violation, insubordination or other such serious misconduct, whereby the employee's retention in service could be hazardous.
- c. Employees alleging unjust treatment may file a written request with the appropriate Carrier Officer for a formal investigation of the grievance.

ARTICLE II - FORMAL HEARING

a. Notice of Hearing

- (1) An employee directed to attend a hearing to determine responsibility, if any, in connection with an incident shall be notified in writing by certified mail, return receipt requested, to the last known address within ten (10) days from the date of occurrence. When an occurrence is not immediately known to the Carrier, the employee shall be notified, as provided above, within ten (10) days from the time Carrier has knowledge of the occurrence upon which the charge is based. The notice shall contain a clear and specific statement of the matters to be investigated and the nature of the charge or charges which are brought against those named as principals. It shall include the date, time, place and nature of the occurrence or incident. The notice shall be sent in duplicate by certified return receipt so that the employee may furnish copy to his/her representative.

NOTE: This Rule does not preclude a Carrier representative from delivering the notice at the employee's work location. Such delivery shall be evidenced by a receipt signed by the accused employee.

- (2) Unless otherwise agreed to, the notice shall state the date, time and place the hearing is to be held, which shall not be less than five (5) days nor more than ten (10) days after the date of notification. Date of notification will be the date the notice is received or first attempted delivery of certified mail (return receipt requested) notice to the last address on record with the Carrier's local officers, whichever date is earliest.
- (3) The Carrier will be responsible to produce sufficient witnesses to develop the facts concerning the incident or occurrence being investigated and the notice of hearing shall include the name of each person receiving the notice, including all witnesses the Carrier intends to call. The employee or the employee's

representative may notify the Carrier of other witnesses who may provide material facts, understanding that this does not include an accumulation of witnesses with the same information. Carrier will direct notice to such witnesses, who shall be compensated under provisions of Article V(a) of this Agreement.

NOTE: A witness with material facts is an individual who can give pertinent testimony in connection with the specific occurrence resulting in charges against the employee and without whose testimony all essential facts upon which to base a decision would not be developed.

- (4) The notice shall inform each employee so notified of the right to representation and the right to bring in witnesses.
- (5) Forty-eight (48) hours in advance of the hearing the Carrier and the individual identified as the accused employee's representative will exchange all records, documents, locomotive recorder tapes, etc, as well as any other items to be used as exhibits at the investigation, to allow both parties to prepare for the hearing.

b. Waiver of Hearing

- (1) An employee notified to appear for a hearing shall have the option, prior to the hearing, to meet with the appropriate Carrier official and the employee's representative, to discuss the act or occurrence and the employee's responsibility, if any.
- (2) If a disposition of the charges is made on the basis of the employee's acknowledgment of responsibility, the disposition shall be reduced to writing and signed by the employee and the official involved and shall incorporate a waiver of hearing and shall specify the maximum discipline which may be imposed for the employee's acceptance of responsibility.

NOTE (i): The disposition of cases under this paragraph shall not establish precedents in the handling of any other cases.

NOTE (ii): No minutes or other record will be made of the discussions and, if the parties are unable to reach an agreed upon disposition, no reference shall be made to these discussions by either of the parties in any subsequent handling of the charges.

NOTE (iii): In cases where more than one (1) employee is notified to appear for a hearing all employees cited to attend as principles must agree to waive their right to a hearing, as otherwise provided by this Article, or the investigation will be held.

c. Postponements of Hearing

- (1) Reasonable postponements at the request of the Carrier or the employee will be granted. Telephone postponement request must be confirmed in writing.

d. Conduct of Hearing

- (1) The hearing shall be conducted by an officer of the employing Carrier who may be assisted by other officers; however, there shall be only one presiding officer. When practicable, the hearing shall be held at the home terminal of the employee involved or in the case where more than one employee, at the home terminal of the majority of the employees.

NOTE: When another Carrier is involved, this Section will not preclude an officer of that Carrier from conducting the hearing or assisting in the hearing recognizing, in any case, there shall be only one presiding officer.

- (2) The employee shall have the right to be represented at the hearing by an employee or an Organization representative of the employee's own choosing. The employee and/or the employee's representative shall have the right to introduce witnesses in the employee's behalf, to hear all testimony and to question all witnesses.
- (3) The accused employee, his representative, or the Carrier, shall have the right to sequester the witnesses.
- (4) An employee's personal service record will not be introduced or referred to in the hearing or in the transcript of the proceedings of the hearing. Only evidence presented at the investigation and contained in the transcript will be used in determining guilt or innocence.
- (5) If the formal hearing is not held within the time limits specified in Article II, the employee will not be disciplined, will be paid for all time lost, and no entry will be made in the employee's personal service record.
- (6) The employee and witnesses will be permitted time off if requested in order to have sufficient rest prior to and following the hearing.

Article III - Transcript of Hearing

- a. The Carrier will produce an accurate written transcript of the hearing proceedings. However, this will not preclude the employee or employee's representative from making a record of the proceedings for their own use.
- b. If, during the hearing, a partial transcript is made prior to the conclusion of the hearing such partial transcript will be made available to the employee and the employee's representative upon request, before the hearing is resumed. If electronic recording devices are used and recordings are available for review by Carrier officials, they also shall be made available upon request for review by the employee and the employee's representative at the appropriate Carrier facility.

- c. In all cases a copy of the transcript will be furnished the employee and his representative within thirty (30) days of close of the hearing.

#### Article IV - Hearing Decision

- a. If the formal hearing results in assessment of discipline, such decision shall be rendered within fifteen (15) days from the date the hearing is concluded, and the employee will be notified in writing of the reason therefore by certified or registered U.S. mail with additional copy provided for the employee representative.
- b. Date of discipline notification will be the date the notice is received or first attempted delivery of certified mail (return receipt requested) notice to the last address on record with the Carrier's local officers, whichever date is earliest.

NOTE: This Rule does not preclude on property delivery of the decision by a Carrier representative. Such delivery shall be evidenced by a receipt signed by the employee.

- c. If the hearing does not result in discipline being assessed, any charges related thereto entered in the employee's personal service record shall be voided.

#### Article V - Compensation for Attending Hearings

- a. Witnesses, as referred to in Article II (a)(3), who are directed by the Carrier to attend a hearing, shall be compensated for all time lost and, in addition, will be reimbursed for actual, reasonable and necessary expenses incurred for each day of the hearing. Where no time is lost they will be paid for actual time attending the hearing, with a minimum of four (4) hours, at rate of pay applicable to the last service performed. Employees who are directed to attend the investigation on their assigned rest day will be allowed the overtime rate. Carrier is required to pay the witnesses requested by the employee or his/her representative under provisions of this Article, provided such witnesses have first-hand or material knowledge of the circumstance under investigation and meet the criteria set forth in Article II, (a)(3) and the note thereto.
- b. When an employee involved in a formal hearing is not assessed discipline, the employee shall be compensated for all time lost. In addition, the employee will be reimbursed for actual, reasonable and necessary expenses incurred for each day of the hearing. Where no time is lost the employee will be paid for actual time attending the hearing, with a minimum of four (4) hours, at rate of pay applicable to the last service performed. Employees who are directed to attend the investigation on their assigned rest day will be allowed the overtime rate.