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AG-MW-2

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Gentlemen:

This is in reference to our February 13, 2009 discussions concerning pending disputes under the current July 1, 1986 NW-Wabash Agreement, as amended, the proper application of certain provisions in a uniform manner across the Eastern, Western, and Northern Regions, and settlement of the associated claims that have been filed, in connection with these respective disputes. We agree that the respective issues are resolved as follows:

**I. USE OF CONTRACTORS**

**A. B&B Craft Practices –**

In order to resolve the dispute as to whether former pre-June 1, 1999 Conrail practices apply to the use of contractors on the Northern Region of the July 1, 1986 NW-Wabash Agreement, the parties agree as follows:

1. Past practices concerning the use of contractors under the July 1, 1986 NW-Wabash Agreement apply on the Northern Region and the former pre-June 1, 1999 Conrail practices concerning the use of contractors do not apply and do not constitute a basis to restrict the use of contractors.
2. There will be no furloughed employees who hold B&B seniority under the NW-Wabash Agreement while a

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contractor is performing bridge or building work within the scope of the NW-Wabash Agreement (i.e., work which has customarily or historically been performed by B&B employees even if contractors may have performed such work in the past under certain circumstances). The only exception shall be bridge tenders who have no other B&B seniority.

3. This Part I A shall not be construed as either permitting or prohibiting the contracting out of bridge or building work when there are no furloughed B&B employees. Rather, when there are no furloughed B&B employees the respective rights of the parties concerning contracting out of B&B work shall continue to be controlled by the rules and practices under the July 1, 1986 NW-Wabash Agreement.

All claims involving the use of a contractor to do B&B work on the Northern Region that were progressed based on former Conrail practices, including but not limited to Cases 1, 2, 3, 4, 6, 8, 9, 11, 12, 13 and 17 of PLB 7272 and subsequent cases held in their abeyance, are withdrawn.

#### **B. Paving –**

Commencing on January 1, 2009, the Carrier has the right at its sole discretion, on a case-by-case basis, to use either a contractor or Company employees to perform paving work. When the Carrier chooses at its managerial discretion to use a contractor to perform paving, there is no requirement for advance notice in accordance with Appendix F and the use of contractors to pave shall not constitute a basis for any time claims.

All claims involving paving are withdrawn, including but not limited to Case 5 of PLB 7272, Case 156 of SBA 1048 and any cases that are being held in abeyance. However, a monetary settlement will be made in consideration of all of the pending claims in Case 5 of PLB 7272, Case 156 of SBA 1048 and any cases that are being held in abeyance, or subsequent claims that have been appealed to Labor Relations that involve paving work performed prior to January 1, 2009, for which either the General Chairman has already discussed in conference or the nine month time limit has not expired. The payment rate will be based on 30 cents per dollar at the straight time rate for the man hours actually consumed by the contractor in paving work.

#### **C. Herzog Ballast Train –**

The Carrier may contract for the use of the Herzog Ballast Train to unload ballast on the right-of-way without assigning any BMWED-represented employee to

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work directly on or with the ballast train. However, at least one BMWED-represented employee from the local forces shall be assigned to the hi-rail crew that will patrol behind the train to perform the work of clearing the dumped ballast from switches, road crossings, etc. Not more than one non-agreement supervisor may be assigned to this hi-rail crew; if more than two employees (1 supervisor and 1 BMWED-represented employee) are required to clear dumped ballast or perform other scope covered work, all additional employees will be BMWED-represented employees.

All claims related to the use of the Herzog Ballast Train are withdrawn, including but not limited to Case 7 of PLB 7272 and subsequent cases held in abeyance.

#### **D. Ballast Delivery –**

Other than BMWED-represented employees may transport ballast purchased from a vendor for delivery from the vendor to a work site and the use of contractors to do so shall not constitute a basis for any time claims.

All claims involving contractor delivery of ballast from a location not on Carrier property are withdrawn, including but not limited to Case 10 of PLB 7272 and subsequent cases held in abeyance.

#### **E. Rail Lubricators –**

The Carrier may use a vendor's specially equipped truck, operated by the contractor employee and with one BMWED-represented employee from the local forces as the Roadway Worker in Charge (RWIC), to fill the lubricator tanks. All other work on lubricators that has customarily been performed by BMWED-represented employees shall continue to be performed by them consistent with historical practices. The Carrier currently owns one specially equipped truck that is operated by a BMWED-represented employee to fill lubricators. That truck shall be retained in service and continue to be operated by a BMWED-represented employee to fill lubricators until the end of the vehicle's normal service life. The parties agree that in the absence of a catastrophic event such as a wreck, the normal service life of this truck will extend at minimum to December 31, 2010, and possibly beyond.

#### **F. Tie Handling –**

##### **1. Tie Pick Up –**

One contractor owned machine operated by a contractor employee may be used with each T&S Gang to pick up/load ties removed from the track by the T&S Gang, without a BMWED-represented employee being assigned to accompany the contractor employee. However, all other pick-up related work, such as sorting, stacking and banding the ties, will

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be performed by BMWED-represented employees. Likewise, stockpiles of scrap ties that are located on the Carrier right-of-way may be loaded by contractors into rail cars or trucks for transportation off the Carrier's property, without a BMWED-represented employee being assigned to accompany the contractor employee. However, if the loading work may foul Carrier tracks that are in service and therefore requires Roadway Worker Protection, the Roadway Worker In Charge and any additional employees necessary to implement the Roadway Worker Protection plan (watchmen, look outs, etc.) shall be BMWED-represented employees.

## 2. Unloading Program Ties --

The parties agree to adopt an arrangement wherein as long as the Carrier has one employee assigned to a bulletined position on each of the three seniority Regions (Eastern, Western, and Northern) who actually operates a Lucky Loader/Jimbo Style Tie Unloading Machine, contractors may be used to perform any additional tie unloading required and with no contractual obligation to place a BMWED-represented employee to accompany the contractor operator. It is understood that employees occupying these Lucky Loader/Jimbo positions may at times perform tasks other than unloading ties, such as handling rail or on track material (OTM). However, prior to January 31, 2010, the parties will meet to discuss in good faith the circumstances concerning the use of the Lucky Loader/Jimbo style machines, the amount of tie unloading actually performed by contractors, and the feasibility of eliminating the use of contractors for any tie unloading. If the parties fail to reach an understanding to continue or adjust this without prejudice arrangement for tie unloading, the parties will revert to their former positions with respect to the rights to use contractors and the rights of BMWED-represented employees to be engaged in the work of unloading ties.

## 3. Claims Concerning Tie Handling --

Pending claims that involve use of a contractor to pick up or unload ties will be disposed of by making payment at the straight time rate for the man hours that the contractor actually performed tie handling work without a BMWED-represented machine operator present. Any such tie-handling claim in which a BMWED-represented machine operator was present with the contractor is withdrawn.

## II. PRODUCTION TAMPER DIFFERENTIAL --

A. The terms in the 9/28/07 and 12/28/07 Dyna-Cat Agreements are expanded to include all production tampers of Mark III or subsequent generation [excludes operators of backup/chase tampers].

Rule 13  
 Tent

OTM  
 to  
 10 p. 6/27

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B. By June 4, 2009, the Carrier will notify the current occupants of each Tamper Operator position who will be covered by Part II A and advise them, in writing, as follows:

1. The terms of Part II A, including the \$1.00 per hour differential, six months restriction on vacating the position and six months protection against displacement shall become effective on June 22, 2009, unless the current occupant elects to vacate the position pursuant to Paragraph 2 below.

2. Employees electing to vacate their position must notify their supervisor, in writing, by June 18, 2009, that they do not desire to remain on the position under these new terms. Such employees who timely notify their supervisor will be allowed to exercise seniority and vacate their Tamper Operator position; however, such employee may be held during the initial bulletin and award cycle of the vacancy created. The bulletin for the vacancy will include the new terms.

III. **ROUND TRIP MILEAGE HOME FOR REST DAYS FOR TRAVELING EMPLOYEES WHO COMMUTE FROM HOME IN THEIR PERSONAL VEHICLE IN LIEU OF STAYING IN A MOTEL -**

A. Employees on positions that do not have a fixed headquarters, who are not provided camp cars and commute from home in their personal vehicle during the workweek in lieu of using a Company provided motel, will be reimbursed the flat amount of \$25 for their one round trip made in their personal vehicle between work and their residence over their rest days. Accordingly, such employees' round trip personal automobile mileage to go home at the end of the week and return to work for the beginning of the next week is not covered by the Article XIV - Travel Allowance or Rule 43 (II) (e) (4) and therefore will not be submitted on the TA or MH code. This flat \$25 amount will be raised to \$30 on January 1, 2010. The employees' round trip home and back in their personal vehicle each day during the workweek, in lieu of using a motel, remains covered by Rule 43 (II) (e) (4) rather than the flat amount described above for the rest day round trip. Article XIV - Travel Allowance will continue to apply to traveling employees who reside in camp cars or motels during their work week and travel to their residences on their weekend rest days in other than Company provided transportation.

B. Existing claims for the round trip home over the rest days to be paid under Rule 43 (II) (e) (4) [the MH payment] are withdrawn, including but not limited to Case 18 of PLB 7272; however, settlement will be made for subsequent claims filed by the Consolidated Federation for round trips prior to January 1, 2009, that specifically identified respective employee names, dates and trip information.

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#### IV. DINING CAR COMMUTE --

A. Rather than adopt the Wesman decision, it is agreed that when employees on production gangs are lodged in motels instead of camp cars but are also furnished meals in a dining car, such employees will:

1. Not be paid a meal allowance;
2. Eat their breakfast and dinner in the dining car on their own unpaid time;
3. Begin and end their paid time for their workday at the dining car;
4. Be paid for the amount of commuting time that is in excess of thirty minutes in traveling between the motel and dining car; and
5. Will be afforded a Gasoline Allowance of \$15 per week for any week subsequent to the effective date of this agreement that the employee works but is not provided Company transportation between the motel and dining car. However, with one exception this allowance will not be paid for any week when an employee is voluntarily absent from work on one or more days. The exception to the non-payment of the allowance because of voluntary absence is that such employee shall still receive the \$15 allowance for a week when the voluntary absence is limited to just one day and the employee used either an approved vacation day or personal leave day for that voluntary absence.

B. Employees who worked in this capacity prior to the effective date of this agreement (on R-8 subsequent to November 13, 2006, T&S 32 subsequent to April 16, 2007, T&S 33 subsequent to June 4, 2007, and T&S 31 subsequent to September 30, 2007) will be allowed \$10 per week, up to the effective date of this agreement, in settlement of all claims in connection with transportation and travel between the motel and dining car and being furnished meals in a dining car while lodged in a motel.

#### V. SEMI TRACTOR TRAILER TRUCKS --

The semi-tractor vehicle operator positions on the Northern Region, currently one at Shiremanstown, Pennsylvania, and one at Toledo, Ohio, and their incumbents will be moved from the vehicle operator classification to the Class 1 Machine Operator Roster in the same manner as the Brandt Material Handling Trucks and the Log Loaders were handled in the 9/28/07 Agreement.